

IN THE UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF MISSOURI  
CENTRAL DIVISION

NORMAN BROWN, et al,            )  
  )  
                  Plaintiffs,        )  
  )  
          vs.                         ) Case No. 17-CV-4082  
  )  
ANNE L. PRECYTHE, et         )  
al,                                    )  
  )  
                  Defendants.        )

CONFIDENTIAL DEPOSITION OF KELLY DILLS,  
a Defendant, produced, sworn and examined on the  
6th day of December, 2017, between the hours of  
ten o'clock in the forenoon and four o'clock in the  
afternoon of that day, at the offices of the  
Missouri Attorney General's Office, Broadway State  
Office Building, Sixth Floor, Jefferson City, Missouri,  
before Kim D. Murphy, Certified Court Reporter, within  
and for the State of Missouri.

A P P E A R A N C E S

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21

22 Court Reporter:  
Kim D. Murphy, CCR

23

24

25

1           IT IS HEREBY STIPULATED AND AGREED, by and  
2   between counsel for the Plaintiffs and counsel for the  
3   Defendants that this deposition may be taken in  
4   shorthand by Kim D. Murphy, CCR, and afterwards  
5   transcribed into typewriting; and the signature of the  
6   witness is expressly waived.

7                           \*   \*   \*   \*   \*

8                           KELLY DILLS,  
9   of lawful age, produced, sworn and examined on behalf  
10   of the Plaintiffs, deposes and says:

11                           DIRECT EXAMINATION

12   QUESTIONS BY MS. BREIHAN:

13           Q.    Good morning.

14                    Can you please state your name for the  
15   record.

16           A.    **Kelly Dills.**

17           Q.    Ms. Dills, you're here for your deposition  
18   today, correct?

19           A.    **Correct.**

20           Q.    And we met a little bit ago. I'm  
21   Amy Breihan, one of the attorneys for the plaintiffs in  
22   this case.

23                    Have you ever been deposed before?

24           A.    **No.**

25           Q.    Okay. So I'm sure your attorneys did a

1     fabulous job preparing you, but I'll run through some  
2     ground rules.

3                     As you know, your testimony here today is  
4     under oath. So your job today is just to tell the  
5     truth to the best of your ability and my job is to ask  
6     questions. If you can, try to answer verbally rather  
7     than with ahead nod or even uh-huh or huh-uh. Because  
8     that's just hard for the court reporter to take down.  
9     She's going to be writing doing everything that  
10    everyone says today.

11                    Do you understand.

12                    **A.    Yes.**

13                    Q.    We'll do our best not to speak over each  
14    other. Sometimes I might ask a question, and you'll  
15    know where I'm doing with the question, but please let  
16    me finish, and I'll do my best to let you finish and  
17    not ask over you; does that sound fair?

18                    **A.    Yes.**

19                    Q.    If I ask a question that doesn't make sense  
20    to you, or you didn't hear me, please just let me know  
21    and we can either have the court report read it back,  
22    or I can rephrase the question so it's more  
23    comprehensible, okay?

24                    **A.    Okay.**

25                    Q.    If you answer a question, I'm going to

1       assume that you understood the question; is that fair?

2               **A.    Yes.**

3               Q.    And finally breaks. We can take a break as  
4       needed. The only caveat to that is if I have a  
5       question pending I'd ask that you answer it before we  
6       take a break.

7               **A.    All right.**

8               Q.    If you need a break, just let your  
9       attorneys know, or let me know, and we'll accommodate  
10      you, okay?

11               I'm going to hand you what I've marked as  
12      Exhibit 1.

13               (Deposition Exhibit No. 1 was marked for  
14      identification.)

15      BY MS. BREIHAN:

16               Q.    I've got a copy for your attorneys as well.  
17               Do you recognize this document, Ms. Dills?

18               **A.    Yes.**

19               Q.    And what is it?

20               **A.    It's a subpoena.**

21               Q.    You've seen this subpoena before today?

22               **A.    Yes.**

23               Q.    And if you go to Exhibit A of the subpoena,  
24      which is sort of the third page of this packet of  
25      documents, there are a series of defined terms, and

1       then eight separate requests for documents.

2                       Do you see what I'm referring to?

3               **A.     Yes.**

4               Q.     Did you take any steps to search for  
5 documents that might be responsive to these eight  
6 requests?

7               **A.     Yes.**

8               Q.     And what did you do?

9               **A.     I did a keyword search of my email for the  
10 juvenile life without paroles for each of the  
11 defendants, or, I guess, the plaintiffs that were  
12 listed.**

13                       And then I did a search of my computer  
14 drive, which is like the hard drive, where we store  
15 documents.

16               Q.     And just to clarify, the plaintiffs in this  
17 case are Mr. Roland, Mr. Brown, and Mr. McElray,  
18 and Mr. Roberts, correct?

19               **A.     I don't know if it's Roberts or McRoberts.**

20               Q.     Roberts.

21               **A.     Okay.**

22               Q.     So I just want to confirm I understand.

23                       So you did a search for each of their last  
24 names?

25               **A.     Yes, I did.**



1           Q.    Did you also do a keyword search for the  
2   acronym JL WOP?

3           **A.    Yes.**

4           Q.    And did you do anything else other than a  
5   keyword search and looking on your drive?

6           **A.    No.**

7           Q.    Did you speak with anyone, other than your  
8   attorneys which are here today, about responding to  
9   this subpoena?

10          **A.    No.**

11          Q.    And did you bring documents with you today  
12   that are responsive to this?

13          **A.    Yes, I did.**

14          Q.    Could I have those?

15               MR. CRANE:  Are they an identical stack?  
16   Our printer's not the greatest.

17               MS. BREIHAN:  Looks like we Dills 1 through  
18   194.

19               MR. CRANE:  That should be right.

20   BY MS. BREIHAN:

21          Q.    I'll take a look at most of these later,  
22   but I noticed the first pages looked like a resume for  
23   you; is that correct?

24          **A.    Correct.**

25          Q.    We talked about trying to get everyone out

1 of here by five for other commitments. One way to  
2 speed that along is to mark this as an exhibit. I'll  
3 do that now.

4 You said you have a copy in there?

5 **A. Yes.**

6 MS. BREIHAN: Can we mark that one so I  
7 have a copy for my reference?

8 MR. CRANE: Sure.

9 MS. BREIHAN: These are not Bates-stamped?

10 MR. SPILLANE: I have a Bates-stamped copy.

11 BY MS. BREIHAN:

12 Q. I'll mark Exhibit 1 today as Dills 1 and  
13 Dills 2.

14 And, Ms. Dills, this is a copy of your  
15 resume, correct?

16 **A. Correct.**

17 Q. Is this an up-to-date copy?

18 **A. Yes.**

19 Q. And it shows that you're currently the  
20 operations manager for the Central Office for the Board  
21 of Probation and Parole, correct?

22 **A. Yes.**

23 Q. And that for about four years you were the  
24 board operations director for the Board of Probation  
25 and Parole, correct?

1           **A.    Yes.**

2           Q.    We'll come back to that in a minute.

3                    Aside from doing the search for documents  
4   in response to the subpoena, which we already talked  
5   about, what else did you do to prepare for your  
6   deposition today?

7           **A.    Had conversations with my counsel.**

8           Q.    Anything else?

9           **A.    No.**

10          Q.    Did you review any documents before today?

11          **A.    The ones that I located, yes.**

12          Q.    But none other than the ones that you  
13   produced for me today?

14          **A.    Correct.**

15          Q.    Okay.  So what's the highest level of  
16   education you received?

17          **A.    Bachelor's.**

18          Q.    And that's in criminal justice, correct?

19          **A.    Yes.**

20          Q.    And then since your graduation in '89,  
21   you've been employed with the Missouri Board of  
22   Probation and Parole consistently, correct?

23          **A.    Yes.**

24          Q.    Pretty significant experience, I'm sure, in  
25   institutional knowledge you have about the Board of

1 Probation and Parole in Missouri?

2 **A. Yes.**

3 Q. Can you talk about what your job duties and  
4 responsibilities currently are as operations manager in  
5 the Central Office?

6 **A. I work for the chief state supervisor, and  
7 I'm responsible for our community corrections unit,  
8 which includes the interstate compact unit, residential  
9 facility contract management, and a command center,  
10 which is charged with electronic monitoring of all  
11 offenders in the state.**

12 Q. So in that position are you involved at all  
13 in supervision of people who are on probation and  
14 parole?

15 **A. No.**

16 Q. Are you involved in hearings for  
17 revocations of parole?

18 **A. No.**

19 Q. And are you involved currently at all in  
20 parole grant reviews?

21 **A. No.**

22 Q. Can you, going backwards, can you tell me  
23 about your duties and responsibilities when you were  
24 the board operations director?

25 **A. Supervision of the parole analysts and the**

1     **board operations clerical staff.**

2             Q.     Anything else?

3             **A.     Those were the general duties.**

4             Q.     Your resume also says that your duties  
5     included interpreting statute, case law, and procedure  
6     developments, correct?

7             **A.     Correct.**

8             Q.     During your coursework at St. Louis  
9     University in the 80's, did you take any legal courses?

10            **A.     Yes.**

11            Q.     What legal courses did you take?

12            **A.     Well, I don't exactly remember. But I did**  
13     **take -- it was undergrad and law. So it was kind of a**  
14     **dual -- I don't exactly remember what it was in.**

15            Q.     Since graduating with your Bachelor's have  
16     you taken any coursework on constitutional law or  
17     Missouri state law?

18            **A.     No.**

19            Q.     And have you received -- strike that.

20                    When you were board operations director, or  
21     in the years preceding, did you receive any training  
22     from the Missouri Department of Corrections or the  
23     Board of Probation and Parole, regarding the law, or  
24     legal interpretation of statute or case law?

25            **A.     Yes. We generally have training on legal**

1       **issues in Probation and Parole.**

2               Q.     And what does that consist of?

3               A.     A professor from the University -- Central  
4       Missouri in Warrensburg, comes down. And I believe  
5       it's a required training for supervisors. And they  
6       train us on preliminary hearings, some due process, and  
7       just general discussion.

8                       Some on discipline as it relates to  
9       employees.

10              Q.     Do you know that professor's name?

11              A.     Dane Miller.

12              Q.     Dane?

13              A.     Dane.

14              Q.     When was the last time that you attended  
15     that training?

16              A.     Probably early 2000's.

17              Q.     Is that provided on a regular basis then?

18              A.     It's usually a one-time training.

19              Q.     And you mentioned that it covers  
20     due process issues, correct?

21              A.     Correct.

22              Q.     What do you remember from the due-process  
23     coursework provided by Professor Miller?

24              A.     Basically what we have outlined in our  
25     procedure with regard to giving an offender, whether

1     they're incarcerated or under supervision, notice of  
2     what their violations are, the opportunity to be heard  
3     by a hearing officer if we arrest them, and then right  
4     to counsel in some instances.

5             Q.     And in what instances does an inmate have a  
6     right to counsel in the parole and probation process?

7             A.     I believe they only have the right to  
8     counsel if they are unable to assist in presenting  
9     their own case or in cross-examining witnesses in cases  
10    of revocation.

11            Q.     I guess the due process sort of topics you  
12    just talked about sounded like maybe uniquely to  
13    revocation; am I understanding correctly?

14            A.     Correct.

15            Q.     Do you recall anything you learned about  
16    due process with respect to the parole grants review  
17    process?

18            A.     No.

19            Q.     And so when you were getting your  
20    Bachelor's at SLU, did you take any coursework on  
21    adolescent development or psychology?

22            A.     Just general psychology.

23            Q.     Just a general studies kind of course?

24            A.     Yes.

25            Q.     In your capacity as board operations

1 director, were you ever responsible or involved in  
2 drafting proposed legislation or just interpreting it?

3 **A. Drafting.**

4 Q. And under what circumstances would you be  
5 involved in drafting proposed legislation?

6 **A. If the department had an initiative that**  
7 **they thought would help us do business better, then**  
8 **certain ideas or concepts would be assigned for**  
9 **different people to write up. And then we would send**  
10 **them through the department director, through the**  
11 **process, through OA.**

12 Q. What's OA?

13 **A. Office of Administration.**

14 Q. Were you ever involved in drafting proposed  
15 legislation related to juvenile offenders?

16 **A. No.**

17 Q. And throughout today, I might use the  
18 acronym JL WOP, you understand that's the punitive  
19 class that's involved in this lawsuit?

20 **A. Yes.**

21 Q. Were you involved in drafting proposed  
22 legislation related to JL WOP?

23 **A. No.**

24 Q. Were you ever involved in reviewing or  
25 analyzing proposed legislation related to JL WOP?



1           **A.     Yes.**

2           Q.     Do you remember the Senate House bills that  
3     you were specifically involved in in reviewing or  
4     analyzing?

5           **A.     I remember several. I wouldn't be able to**  
6     **point to one specifically.**

7           Q.     When you were board operations director, I  
8     assume that you as part of that job attended  
9     administrative meetings regularly; is that fair to say?

10          **A.     Yes.**

11          Q.     And board meetings?

12          **A.     Yes.**

13          Q.     And meetings with parole analysts?

14          **A.     Yes.**

15          Q.     Did you attend any other regular  
16     administrative meetings in your capacity as board  
17     operations director?

18          **A.     Probation and Parole administrators' team**  
19     **meeting.**

20          Q.     And how often would the Probation and  
21     Parole administrators' team meeting occur?

22          **A.     Monthly.**

23          Q.     How often would the board meetings occur?

24          **A.     Generally, once a month.**

25          Q.     And what about the analysts meeting; how

1 often did they occur?

2 **A. Once a month.**

3 Q. And aside from -- well, strike that.

4 Who generally would be present at these  
5 monthly board meetings?

6 **A. The board members. The chairman of the**  
7 **board's executive assistant. The parole analyst. And**  
8 **the institutional regional administrator. And special**  
9 **guests.**

10 Q. Who determines who can be a special guest  
11 at the board meetings?

12 **A. The chairman.**

13 Q. And who typically are the special guests?

14 Are there other Board of Probation and  
15 Parole employees?

16 Are they legislators?

17 Who are they?

18 **A. They're generally trainers who are**  
19 **providing training to the board on topics. Or other**  
20 **Department of Corrections staff to try to educate board**  
21 **members about programs that inmates attend.**

22 Q. Anybody else?

23 **A. Not that I can recall.**

24 Q. And then who would generally attend the  
25 monthly parole analyst meeting?

1           **A.     The parole analysts. The institutional**  
 2           **regional administrator. And any institutional chief**  
 3           **administrative officer, meeting the supervisors of the**  
 4           **institutional parole offices were invited to attend.**

5           Q.     Anyone else?

6           **A.     No.**

7           Q.     During the time that you were board  
 8           operations director, who was the board -- the chair's  
 9           executive assistant?

10          **A.     Linda Welch. And then Pam Rogers.**

11          Q.     And who was the board chair during your  
 12          tenure as board operations director?

13          **A.     Ellis McSwain and Kenny Jones.**

14          Q.     When did Kenny Jones become chair?

15          **A.     In February of 2017.**

16          Q.     And then you were transferred to the  
 17          operations manager position shortly thereafter; is that  
 18          fair to say?

19          **A.     Yes.**

20          Q.     Sort of a changing of the guard occurred,  
 21          it seems, in February or spring of 2017?

22          **A.     Yes.**

23          Q.     And who was the institutional regional  
 24          administrator during your tenure as board operations  
 25          director?

1           **A.     Mike Weber.   And then Michelle Kasak.**

2           Q.     Do you recall when Ms. Kasak sort of took  
3 over in that role?

4           **A.     Probably 2014.**

5           Q.     When you were board operations director,  
6 you mentioned you supervised the parole analysts and  
7 board operations clerical support, correct?

8           **A.     Yes.**

9           Q.     Did you supervise anyone else?

10          **A.     No.**

11          Q.     And who was your direct supervisor?

12          **A.     Ellis McSwain.**

13          Q.     And then for a short period, Mr. Jones,  
14 correct?

15          **A.     Correct.**

16          Q.     Do you have any professional certifications  
17 or licenses that are not listed on your resume?

18          **A.     No.**

19          Q.     The amended initial disclosures that the  
20 defendants in this case served identify you as the  
21 operations manager. And they indicate that you are  
22 likely to have information about the policies and  
23 procedures of the Missouri Board of Probation and  
24 Parole, especially technical analysis of parole issues.

25                 Is that a fair assessment of the

1 information that you might have relating to this case?

2 **A. Yes.**

3 Q. Can you tell me what that phrase means,  
4 "technical analysis of parole issues?"

5 **A. As board operations director, and even in**  
6 **my current role, I mean, you're constantly examining**  
7 **policy procedure in light of new legislation.**

8 **For example, I was in charge for the**  
9 **department of changing all the policies and procedures**  
10 **when the criminal code became effective in 2017, in**  
11 **making sure that all of our applicable computer systems**  
12 **could accept new charge codes, changed all the**  
13 **policies, both departmentally and divisionally.**

14 Q. So is it fair to say that your job, both  
15 when you're board operations director and currently,  
16 was to keep your finger on the pulse of evolution in  
17 the law and make sure that the Board of Probation and  
18 Parole was in compliance with current a law?

19 Is that fair to say?

20 **A. Correct.**

21 Q. So what rules, or what law, what sources of  
22 law govern what the parole board does every day?

23 **A. I don't understand.**

24 Q. You talked about policies and procedures,  
25 right?

1           **A.    Yes.**

2           Q.    That's sort of one source of rules or  
3 requirements that govern the work that the board and  
4 parole staff do every day; is that fair to say?

5           **A.    Yes.**

6           Q.    Are there any other documents or laws that  
7 in your experience and opinion govern the work that the  
8 parole board does and the parole analysts do every day?

9           **A.    The Code of State Regulations and our**  
10 **administrative rules.**

11          Q.    Anything else?

12          **A.    No.**

13          Q.    When you refer to the administrative rules,  
14 are you talking about the Blue Book? Or is that  
15 something different?

16          **A.    No, I'm not talking about the Code of State**  
17 **Regulations.**

18          Q.    Okay. You're familiar with the -- this  
19 Blue Book, correct?

20          **A.    Yes.**

21          Q.    And I can mark it as Exhibit 3 so that  
22 we're all referring to the same thing.

23                   (Deposition Exhibit No. 3 was marked for  
24 identification.)

25   BY MS. BREIHAN:

1           The Blue Book here that we've marked as  
2   Exhibit 3, that governs or controls the parole staff?

3           **A.    The Blue Book is reflective of board**  
4   **practice and policy.**

5           Q.    Okay.

6           **A.    And it's published to assist offenders in**  
7   **understanding kind of the parole system in Missouri.**

8           Q.    Okay. So I just want to make sure I  
9   understand.

10           The Blue Book is really more a guide for  
11   inmates; it's not necessarily a guide for board members  
12   or parole analysts; is that correct.

13           **A.    Correct.**

14           Q.    So generally speaking, parole board member  
15   analysts don't really refer to this Blue Book when  
16   they're carrying out their job duties, at least to your  
17   knowledge?

18           **A.    No.**

19           Q.    Do you know who's responsible for putting  
20   the Blue Book together?

21           **A.    As an agency we have sort of have a**  
22   **committee that reviews all the administrative rules.**  
23   **The Blue Book.**

24           We have also a White Book. We have a Green  
25   Book. And we have an Orange Book.

1                   And so it's generally whoever is considered  
2   the subject matter expert in that area, and then I'm  
3   responsible for the final review before publication.

4           Q.    When you say subject matter in the area,  
5   are you talking about, like, there's somebody, or some  
6   people who have subject matter in procedures governing  
7   parole grants?

8           A.    Yes.

9           Q.    And who would that be?

10          A.    The parole analysts group.

11          Q.    So the parole analysts are subject matter  
12   experts in parole grant reviews?

13          A.    Yes.

14          Q.    And what makes them the subject matter  
15   experts?

16          A.    Experience. Knowledge.

17          Q.    Anything else?

18          A.    No.

19          Q.    Do you know what the hiring criteria is for  
20   a parole analyst?

21          A.    Yes.

22          Q.    What is it?

23          A.    You have to have a certain level of  
24   experience and history with Probation and Parole.

25          Q.    Is that, like, a certain number of years?



1           **A.     Certain number of years.   A Bachelor's**  
2           **degree.   And I believe that you have to be the level of**  
3           **at least a unit supervisor or above for two years.**

4           Q.     Is there any specific subject that's  
5           required?   Or just a Bachelor's degree period?

6           **A.     I believe the Bachelor's degree has to be**  
7           **in a related field to be hired even in Probation and**  
8           **Parole at a certain level.**

9           Q.     So what would be considered a related  
10          field?

11          **A.     Criminal justice.   Sociology.   Psychology.**

12          Q.     And do you know how many parole analysts  
13          have psychology degrees?

14          **A.     No.**

15          Q.     Do any parole analysts currently employed  
16          by the board have advanced degrees beyond a Bachelor's?

17          **A.     I don't know.**

18          Q.     Does anyone you know of when you were board  
19          operations director?

20          **A.     I don't know.   I didn't hire many of those**  
21          **staff.**

22          Q.     So who else would -- so who else would be  
23          on the committee for reviewing the administrative  
24          rules, or the Blue Book, keeping those up to date?

25          **A.     If there were significant changes they**

1     **would be presented to the board at a board for voting**  
2     **and approval.**

3             Q.     But you don't know the names -- if you look  
4     at the first page of Exhibit 3, it says January 1st,  
5     2017 -- which indicates to me it was updated the  
6     beginning of this year.

7             Is that your understanding of what that  
8     notation means?

9             **A.     Yes.**

10            Q.     Do you know the names of specific people  
11     who were involved with updating this booklet?

12            **A.     Yes.**

13            Q.     Who?

14            **A.     Myself.   Steve Mueller.   Matt Kimsey.**  
15     **Robin Warder.   Brian George.   Mike Davis.   Rick**  
16     **Kuttenkuler.**

17            Q.     Do you know how to spell his last name?

18            **A.     K-u-t-t-e-n-k-u-l-e-r.**

19            Q.     Anyone else responsible for revising the  
20     Blue Book then?

21            **A.     Not that I remember.   Other than**  
22     **administrative support staff.**

23            Q.     Could you just walk me through what the  
24     process was that you and the others you just named  
25     undertook to revise the Blue Book?

1           **A.     We went through each section, made sure the**  
 2           **wording was accurate, looked for things that were**  
 3           **obsolete or areas that needed to be added.**

4           Q.     And you said one of the things you did was  
 5           made sure wording was accurate.

6                     What were you cross-referencing the Blue  
 7           Book to in order to make sure it was accurate?

8           **A.     Current practice.**

9           Q.     Is there a document that summarizes that  
 10          that you'd be comparing it to?

11          **A.     Just board decisions as reflected in their**  
 12          **meeting minutes.**

13          Q.     Okay. So you would be making sure that  
 14          wording in the Blue Book was accurate as compared to  
 15          board meeting minutes; is that correct?

16          **A.     Or policy and procedure.**

17          Q.     When you and the others updated the Blue  
 18          Book in early 2017, did you incorporate any specific  
 19          provisions regarding JL WOP parole hearings or  
 20          Senate Bill 590?

21          **A.     I believe we did.**

22          Q.     Could show me where that is?

23          **A.     (The witness indicated.) On page ten,**  
 24          **number 20, item D.**

25          Q.     And 20, it says, "Certain offenders who

1 were under the age of 18 at the time of the offense may  
2 petition the board after serving 25 years in accordance  
3 with 558.047 RSMo. Parole consideration will be  
4 determined by the board on an individual basis."

5 Is that language that you drafted? Or  
6 someone else drafted to put in there?

7 **A. I don't remember.**

8 Q. Aside from this reference on page ten to  
9 Missouri statute, is there any other language in this  
10 Exhibit 3 that references or refers to JL WOP or  
11 Senate Bill 590?

12 **A. Not that I know of.**

13 **(Deposition Exhibit No. 4 was marked for**  
14 **identification.)**

15 BY MS. BREIHAN:

16 Q. I'll hand you what I've marked as  
17 Exhibit 4.

18 We've been talking or referencing policies  
19 and procedures. And is this a table of contents for  
20 the policies and procedures that you've been sort of  
21 referring to in passing?

22 **A. It's a table of contents for the divisional**  
23 **manual for the Probation and Parole.**

24 Q. So are there any policies and procedures  
25 which relate to parole review, which would be found

1 somewhere else, other than in this divisional manual?

2 **A. No.**

3 Q. And can you identify for me which of these  
4 procedures relate specifically to parole review?

5 **A. Chapter 6.**

6 Q. Any other chapters or specific policies or  
7 procedures other than what's here in chapter six?

8 **A. Not that relate to parole review.**

9 Q. Are there any procedures in the divisional  
10 manual which specifically mentioned JL WOP?

11 **A. Not to my knowledge.**

12 Q. Are there any that specifically mentioned  
13 youthful offenders?

14 **A. Not to my knowledge.**

15 Q. And just so we understand going forward, by  
16 youthful offenders I mean individuals who were  
17 under 18 at the time of the underlying offense.

18 Are there any specific procedures that  
19 relate to Senate Bill 590?

20 **A. No.**

21 Q. And who is responsible for drafting these  
22 procedures?

23 Is it that same committee that you talked  
24 about?

25 **A. It's a divisional manual worker committee.**

1           Q.    Do you know, who was that work group  
2   committee during the time that you were board  
3   operations director?

4           **A.    Over 20 people.**

5           Q.    Okay.

6           **A.    I wouldn't be able to give you their names.**

7           Q.    Okay. Do you remember any names?

8           **A.    I believe that they -- the chair of that**  
9   **group was Mary Beth Stewart.**

10          Q.    And who's Ms. Stewart?

11          **A.    At that time, she was a district**  
12   **administrator in the Springfield region.**

13          Q.    What's a district administrator do?

14          **A.    Supervises the field Probation and Parole**  
15   **office.**

16          Q.    And I should have asked this question  
17   earlier, but the names you mentioned earlier for the  
18   committee that you and Mr. Mueller were on that was  
19   responsible for revising the Blue Book, are those other  
20   individuals all parole analysts?

21          **A.    Yes.**

22          Q.    Other than Mary Beth Stewart, do you  
23   remember anyone else that was on the divisional manual  
24   work group committee?

25          **A.    The Chapter 6 committee specific to**

1 institutional procedures have a subgroup that consisted  
2 of Mike Davis, Matt Kimsey. I'm not sure if  
3 Michelle Kasak was a part of that group or not. And  
4 Tina Princler.

5 Q. What's Ms. Princler's title?

6 A. She is a district administrator II at the  
7 Moberly Correctional Center.

8 Q. Were there any lawyers on either of these  
9 committees?

10 A. Not on the committee.

11 Q. What was the process?

12 Let's focus on the Blue Book. The  
13 committee you were a part of after you and the others  
14 sort of did your work to prepared revisions to the Blue  
15 Book, what would happen next?

16 A. Well, the first thing that happens is the  
17 administrative rules are amended.

18 And then we worked on the Blue Book, which  
19 is kind of -- I don't know what you would call  
20 it -- but it's referred to in those administrative  
21 rules. And both of those are approved by Department of  
22 Corrections' legal counsel and the department director.

23 Q. So it's your understanding then that the  
24 revisions that you contributed to the Blue Book were  
25 made after the administrative rules themselves had been

1 amended?

2           **A. It's part of the process. They go hand in**  
3 **hand.**

4           Q. Were you responsible -- strike that.  
5 Did you participate at all in revising the  
6 administrative rules?

7           **A. Yes.**

8           Q. And who else was involved in that process?

9           **A. Matt Kimsey. Steve Mueller. And legal**  
10 **counsel.**

11          Q. No board members?

12          **A. No.**

13          Q. And is it the same process for approval of  
14 the administrative rules for the Blue Book, where it  
15 goes to DOC legal counsel, and then the department  
16 director?

17          **A. Yes.**

18          Q. And who would the legal counsel that looked  
19 at it?

20          **A. Jay Boresi.**

21          Q. Was he actually in that working group that  
22 worked on revising the administrative rules?

23          **A. He was not in the working group. He was on**  
24 **a criminal code revision team.**

25          Q. Who was the legal counsel on that work



1 group?

2 **A. He wasn't on the work group.**

3 Q. I'm sorry. I thought -- then we should  
4 clarify.

5 **A. He was not on the group -- work group. He**  
6 **had approval of the final product after the work group.**  
7 **I mean, he would have had input along the way in the**  
8 **process as we sent drafts.**

9 Q. But the ones who were actually doing the  
10 drafts were you, Kimsey, and Mueller, correct?

11 **A. Correct.**

12 Q. Mr. Kimsey doesn't have a law degree?

13 **A. No.**

14 Q. Do you know what his experience is?

15 **A. He's been a field Probation and Parole**  
16 **officer, a field unit supervisor, an institutional**  
17 **parole supervisor, and a parole analyst.**

18 Q. So other than the administrative rules,  
19 which you said in your mind are the same as the state  
20 regs, and the procedure, divisional manual, which we  
21 marked as Exhibit 4, are there any other sources of  
22 authority that govern the board or parole staff's work  
23 every day?

24 **A. Operational memos issued by the chairman.**

25 Q. Okay. And what would those typically

1 relate to?

2           **A. They relate to what constitutes a majority**  
 3 **board.**

4           They could relate to day-to-day operations,  
 5 such as the maximum number of hearings that should be  
 6 conducted in a day.

7           Q. Anything else?

8           **A. I suppose there could be a memo issued for**  
 9 **any reason.**

10           Q. That may come up again later today, but  
 11 aside from the Blue Book, the divisional manual, the  
 12 administrative rules, and operational manuals, are  
 13 there any other sources that would govern the board?

14           **A. Not outside of statute.**

15           Q. Or the Constitution, correct?

16           **A. Correct.**

17           Q. When you first started with the Department  
 18 of Corrections, what training did you receive?

19           **A. Training in policy, procedure. Such as, I**  
 20 **mean, basically training on what's in the manual. How**  
 21 **to write reports. How to interact with offenders.**

22           Q. Anything else?

23           **A. Well, you could take each one of the**  
 24 **sections of the manual, and we were trained on that.**  
 25 **How to conduct urinalysis tests. Use of force.**

1           Q.    But anything else, aside from what's in the  
2   manual, did you receive training on?

3           **A.    Not that I remember.**

4           Q.    Did you receive any additional or  
5   specialized training when you became board operations  
6   director?

7           **A.    Other than attending conferences through**  
8   **APAI, which is the Association of Paroling Authorities**  
9   **International, no.**

10          Q.    How often would you attend APAI  
11   conferences?

12          **A.    Once a year.**

13          Q.    Do you still attend them?

14          **A.    No.**

15          Q.    When's the last time you attended?

16          **A.    2015.**

17          Q.    Would anyone else from the parole board  
18   attend those as well?

19          **A.    Usually the entire board, except for one**  
20   **member would stay behind, would attend.**

21          Q.    Have you received any training in  
22   motivational interviewing with your many years with the  
23   Department of Corrections?

24          **A.    Yes.**

25          Q.    When did you receive that training?

1           **A. I don't remember. It's been several years**  
2           **ago that I had the initial training.**

3                   **And then we held a training for the board,**  
4           **when I was board operations director, on motivational**  
5           **interviewing during parole hearings.**

6           Q. Do you remember when that was that you held  
7           that for the board?

8           **A. No.**

9           Q. Have you ever received any formal  
10          training -- I'm talking about during your time as board  
11          operations director, or before or since -- have you  
12          ever received any training in adolescent development?

13          **A. Through the juvenile -- well, not through**  
14          **my employment with the state.**

15          Q. Okay. Did you have other employment other  
16          than employment with the State?

17          **A. I did an internship for St. Louis County**  
18          **Justice -- the Juvenile Justice Center.**

19          Q. Is that when you were in college?

20          **A. Yes.**

21          Q. So aside from that internship, have you  
22          received any training on adolescent development?

23          **A. No.**

24          Q. And that internship would have been in the  
25          1980s? Early '80s, right?

1           **A.     Yes.**

2           Q.     Have you received any training while  
3 employed with the Department of Corrections in child  
4 psychology?

5           **A.     No.**

6           Q.     Have you received any training while  
7 employed by the Department of Corrections on  
8 evidence-based penal practices?

9           **A.     Yes.**

10          Q.     And what training have you received on that  
11 topic?

12          **A.     A general course is offered through the**  
13 **Department of Corrections.**

14                 **I believe -- I don't remember the**  
15 **year -- but it's when we started the reentry unit, and**  
16 **we did training in evidence-based practices,**  
17 **criminogenic needs, and case management.**

18          Q.     And can you explain to me just generally  
19 what evidence-based penological practices means?

20                 What that phrase means to you?

21          **A.     What it means to me is that you follow what**  
22 **works. Meaning that, when I think about supervision,**  
23 **or even the custody of offenders, you should have a**  
24 **system set up that assesses them upfront, targets**  
25 **interventions, and holds them accountable through a**

1     **system of sanctions and incentives.**

2             Q.     And so how does that -- how does that  
3     relate to reviewing somebody for release on parole?

4             A.     In my opinion, when you're interviewing or  
5     reviewing a case for readiness for release, you need to  
6     look at not only their background and accountability  
7     for their own actions, but also be looking at risk to  
8     the community, what needs they have, what needs they've  
9     addressed, and the ones that they haven't, you should  
10    use to set special conditions.

11            Q.     And you talked about assessing risk to the  
12    community.

13                    Have you received any training on the use  
14    of risk assessment tools in parole review?

15            A.     Through the Department of Corrections, and  
16    through independent research on different tools,  
17    attendance at APAI conferences, attendance at other  
18    conferences.

19            Q.     What training -- we'll go through  
20    those -- what training has MDOC provided to you for  
21    risk assessment tools?

22            A.     The initial Probation and Parole officer  
23    training.

24            Q.     And so that would have been when you first  
25    started in 1989?

1           **A.     Yes.**

2                   And when I became an IPO, there was IPO  
3   specific training on the tools that they use. And that  
4   would have been in 1996.

5                   And then we've had various consultants, or  
6   our research department, validate the tools that we've  
7   had for -- to do presentations on risk measures using  
8   our own population.

9           Q.    Do you remember the names of any of the  
10   consultants you just referred to?

11           **A.     No.**

12           Q.    And you mentioned in '96, when you became  
13   an IPO, you received training on the tools they used.

14                   Does the tools that the IPOs use have any  
15   sort of name?

16           **A.     Salient factor score.**

17           Q.    Has that changed at all since 1996?

18           **A.     Yes.**

19           Q.    How has it changed?

20           **A.     The variables have changed since 1996.**

21                   In 2005, I believe it was revised to  
22   reflect different variables and to re-weight some of  
23   the other variables.

24           Q.    Were you involved in that process at all?

25           **A.     No.**

1 Q. And who would have been?

2 A. I don't know.

3 Q. Who would know the answer to that question?

4 A. Steve Mueller.

5 Q. Why would he know?

6 A. He worked at Central Office at that time  
7 period and may have been involved.

8 It was likely the analysts group at that  
9 time.

10 Q. And other than the changes in 2005, do you  
11 know, have there been any other changes to the salient  
12 factor score since then?

13 A. Not outside of revalidation of the tool.

14 Q. And who conducted that revalidation?

15 A. The department's research and evaluation  
16 section.

17 Q. Do you know the last time that a  
18 revalidation was done?

19 A. It was under my tenure as board operations  
20 director; although I don't recall the specific time  
21 frame.

22 Q. Do you know if it was within the last five  
23 years?

24 A. Yes.

25 Q. You also mentioned having done independent



1 research about risk assessment tools, correct?

2 A. Yes.

3 Q. What independent research did you do?

4 A. Well, I've been on committees that, and I'm  
5 currently on a committee, to adopt a new risk  
6 assessment case management system for the department.

7 And so we've had presentations from the  
8 company -- I can't think of the name of it off the top  
9 of my head -- that sells the level of service, case  
10 management inventory product.

11 And then the University of Cincinnati, the  
12 Ohio Risk Assessment Instrument. As well as the Strong  
13 Stable Static 99, which is some of those are specific  
14 to sex offenders and not general risks.

15 Q. Does the Department of Corrections use  
16 either of those, the Ohio or the Strong Stable Static  
17 99?

18 A. They use the Stable and the Static 99.  
19 They're in the process of reviewing several instruments  
20 and choosing one to use department-wide.

21 Q. Why are they doing that?

22 A. I believe they -- that through a current  
23 initiative with the new director, the belief is that  
24 there are better tools out there that more accurately  
25 reflect the risks that we need to predict.

1           Q.    So the current tools aren't working well  
2    enough, in the new director's opinion, it sounds like?

3                   MR. SPILLANE:  I'll object to the question  
4    as to leading as to the form of the question.

5    BY MS. BREIHAN:

6           Q.    You can answer.

7           **A.    The current instrument does not measure the**  
8    **risk that is most important, in the director's opinion,**  
9    **I believe.**

10          Q.    Have you had -- we're talking about  
11   Anne Precythe, right?

12          **A.    Yes.**

13          Q.    Have you had conversations with  
14   Director Precythe about the risk assessment tool that  
15   the department's currently using?

16          **A.    No.  I've had conversations with the**  
17   **counsel of state governments.  Who's currently**  
18   **providing technical assistance to the department and**  
19   **the state.**

20          Q.    Who is the counsel of state governance have  
21   you spoken to about that?

22          **A.    Ben Sheeler.  Andy Barbie.**

23          Q.    Anyone else?

24          **A.    Rachel Drueghammer.  And Bree Derrik.**

25          Q.    And then you mentioned also that you

1 learned about risk assessment tools through APAI and  
2 other conferences, correct?

3 **A. Correct.**

4 Q. Are there certain risks assessment tools  
5 for certain types of inmate? Or is it kind of one size  
6 fits all?

7 **A. Well, there's several assessment tools,**  
8 **throughout the department that assess, depending on**  
9 **where they're at in the system.**

10 Q. So you talked about the salient factor  
11 score.

12 What other risk assessment tools are there?

13 **A. We have a field risk reduction instrument,**  
14 **which is used to determine level of supervision.**

15 **There's an institutional classification**  
16 **analysis, which is used to determine custody level.**

17 **There are substance abuse screening scales.**

18 **A gender responsive assessment.**

19 Q. Anything else?

20 **A. And then assessments on sexual offenders.**  
21 **Mental health may have some screening that they use,**  
22 **and assessment tests, which may or may not be**  
23 **available.**

24 Q. So one of the tools that you talked about  
25 is gender-specific, correct?

1           **A.    Yes.**

2           Q.    And is that because female -- females come  
3 to crime differently than male offenders?

4           **A.    Yes.**

5           Q.    So there are different circumstances and  
6 variables that need to be taken into account when  
7 assessing the risk of a female offender versus a male  
8 offender, correct?

9           **A.    Correct.**

10          Q.    Does the Department of Corrections use any  
11 specific assessment tool that is crafted specifically  
12 for juvenile offenders?

13          **A.    I don't know.**

14          Q.    What does ADHR mean; do you know?

15          **A.    Addressing discrimination, harassment, and**  
16 **retaliation.**

17          Q.    So is that some of the training that you  
18 received during your employment with DOC as well?

19          **A.    Yes.**

20          Q.    Have you ever used the term "verbal judo?"

21          **A.    Yes.**

22          Q.    What does that mean in the context of  
23 parole hearings?

24          **A.    In the context of parole hearings?**

25          Q.    Uh-huh.

1           A.    I don't know that it would be applicable.

2           Q.    I guess outside of that context, what does  
3 it mean to you?

4           A.    To me, it's a way of communicating with an  
5 offender, or someone who is being disruptive or  
6 difficult, in sort of defusing and de-escalating and  
7 redirecting the conversation.

8           Q.    Is that something you received training on?

9           A.    A long time ago.

10          Q.    Did the Board of Probation and Parole have  
11 any annual training requirement for board members or  
12 analysts?

13          A.    I believe that they are required to attend  
14 certain trainings that are mandatory for all department  
15 staff, such as the ADHR.

16                   Prison rape elimination training.

17                   There may be some others, but I don't  
18 remember what-all is actually mandatory training.

19          Q.    Is there, like, an hours requirement or  
20 anything like that?

21          A.    There are for general staff in the  
22 Department of Corrections.

23          Q.    And what's the hours requirement for  
24 general staff?

25          A.    Forty hours.

1           Q.    And does that apply to the board members,  
2   too?

3           **A.    I don't know.**

4           Q.    Does that 40-hour requirement apply to  
5   parole analysts?

6           **A.    Yes.**

7           Q.    Does it apply to IPOs?

8           **A.    Yes.**

9           Q.    Have you personally conducted any training  
10   for the board of parole analysts?

11          **A.    Not personally.**

12          Q.    But one of your -- fair to say that one of  
13   your responsibilities when you were board operations  
14   director was hunting down or organizing training  
15   opportunities for the board or analysts, correct?

16          **A.    Yes.**

17          Q.    I'll hand you what I've marked as  
18   Exhibit 5.

19                   (Deposition Exhibit No. 5 was marked for  
20   identification.)

21   BY MS. BREIHAN:

22          Q.    This is Bates-stamped AGO485 through 487.

23                   Do you recognize this?   And it's  
24   double-sided.

25                   Do you recognize this document, ma'am?

1           **A.     Yes.**

2           Q.     And this a -- looks like it's an email from  
3     you to Mr. McSwain in October of 2013, correct?

4           **A.     Yes.**

5           Q.     And the subject is training proposal?

6           **A.     Yes.**

7           Q.     And attached to it was this memorandum that  
8     you prepared to Mr. McSwain regarding board member  
9     analyst training proposal, correct?

10          **A.     Yes.**

11          Q.     Why were you preparing this memo about  
12     training proposals?

13          **A.     When I took the position as board**  
14     **operations director, there were many new**  
15     **annually-appointed board members who were not**  
16     **corrections practitioners, and they came from different**  
17     **disciplines, and I believed it would enhance their**  
18     **abilities to conduct parole hearings if they**  
19     **participated in some training to learn more about the**  
20     **criminal justice-involved population.**

21          Q.     And who's Jim Wiseman?

22          **A.     The chief of staff training for the**  
23     **Department of Corrections.**

24          Q.     And is it fair to say that Mr. McSwain  
25     asked you to meet with Jim to develop a training

1 program because of the new members without sufficient  
2 correctional experience?

3 A. Yes.

4 Q. And did Mr. McSwain respond to this  
5 October 2013 memorandum?

6 A. Not in writing.

7 Q. But he did respond to you?

8 A. (The witness nodded her head.)

9 Q. Did he implement any of your proposals?

10 A. He was supportive. We did develop a  
11 motivational interviewing training which was presented  
12 to the board.

13 We typically had used kind of the guests  
14 coming in and talking about, you know, their subject  
15 matter, or whatever, to inform the board.

16 I mean, I can recall that we had MSOP  
17 staff, which is the Missouri Sex Offender Program, come  
18 in and describe the program, and what the program was  
19 supposed to do to reduce risk of future sexual  
20 offending.

21 The chief of substance abuse talked about  
22 institutional and community treatment.

23 We had training on the salient factor score  
24 itself and how to score it.

25 Q. Did Mr. McSwain ever implement an executive



1 ethics training like you recommended in this memo?

2 **A. He did not.**

3 Q. And what about the National Parole Resource  
4 Center Board Self-Assessment Training; did he implement  
5 that?

6 **A. No.**

7 Q. Has the parole board ever received any  
8 training, either formally or through presentations by  
9 special guests, about adolescent development?

10 **A. Not that I know of.**

11 Q. Has parole staff received any such  
12 training?

13 **A. Not that I know of.**

14 Q. Has the board received any training on  
15 child psychology?

16 **A. Not that I know of.**

17 Q. What about parole staff, have they received  
18 any such training?

19 **A. Not that I know of.**

20 Q. And given your involvement in organizing  
21 training, it's fair to say that if they had during your  
22 tenure as board operations director you would have  
23 known about it?

24 **A. Yes.**

25 Q. Has the board received any training

1       regarding JL WOP or on Miller versus Alabama?

2               **A.    I don't know.**

3               Q.    Has the parole board received any such  
4       training?

5               **A.    No.**

6               Q.    To your knowledge, has a board member ever  
7       requested training in any of those three topics I just  
8       mentioned?

9               **A.    No.**

10              Q.    Has parole staff ever requested that?

11              **A.    No.**

12              Q.    Have you?

13              **A.    No.**

14              Q.    Why not?

15              **A.    Why did I not receive training; is that**  
16       **your question?**

17              Q.    Uh-huh.

18              **A.    Juvenile life without parole wasn't a**  
19       **factor until the Governor signed the law into effect.**

20              Q.    We talked a little bit earlier about you  
21       sort of keeping your finger on the pulse of developing  
22       law, correct?

23              **A.    Uh-huh.**

24              Q.    You're familiar with the Miller versus  
25       Alabama decision, right?

1           **A.     Yes.**

2           Q.     And what's your understanding of what that  
3     decision says or means?

4           **A.     I couldn't tell you off the top of my head.**  
5     **I've been away from it a little while.**

6           Q.     Fair enough.

7           **A.     I had a file that had all of the decisions**  
8     **in them, and I would review, and keep points, but I**  
9     **didn't study for today.**

10          Q.     Sure.

11                 Do you remember when that decision came  
12     down?

13          **A.     No.**

14          Q.     And do you know, are you familiar with the  
15     Montgomery versus Louisiana decision?

16          **A.     I've heard of it.**

17          Q.     Do you remember when that decision came  
18     down?

19          **A.     After the Miller decision.**

20          Q.     But you don't remember a year?

21          **A.     No. I don't remember the year.**

22          Q.     So you said there wasn't really -- JL WOP  
23     wasn't an issue until the Governor passed the bill, and  
24     you're talking about Senate Bill 590, correct?

25          **A.     Correct.**

1           Q.    Before then the department of the Board of  
2 Probation and Parole wasn't concerned about parole  
3 review for inmates serving life without parole  
4 sentences?

5           **A.    Correct.**

6           Q.    And you mentioned you had a file with all  
7 the decisions, relevant decisions, Miller, Montgomery  
8 in it, you just don't have it with you today, correct?

9           **A.    Correct. I don't even know if I kept it**  
10 **under my control, or if I gave it to Steve when we**  
11 **switched duties.**

12          Q.    Would that file have any notes about your  
13 interpretation of either decision?

14          **A.    No.**

15          Q.    Would it have any communications with  
16 anyone about those decisions?

17          **A.    No. Maybe highlighted, underlined, but**  
18 **that would be it.**

19                   **(Deposition Exhibit No. 6 was marked for**  
20 **identification.)**

21 BY MS. BREIHAN:

22          Q.    I'll hand you what I've marked as  
23 Exhibit 6.

24                   This might refresh your recollection about  
25 when the Montgomery decision came down.

1           It appears that pretty immediately after  
2   learning of the decision you forwarded it to legal for  
3   review, correct?

4           **A.    Yes.**

5           Q.    Why did you do that?

6           **A.    For them to inform the board what we needed**  
7   **to do, if anything. Or if there was any application to**  
8   **the board and their practices.**

9           Q.    And this was several month before the  
10   Governor signed Senate Bill 590?

11          **A.    Yes.**

12          Q.    But you already thought it was necessary  
13   for the board to take some response in light of the  
14   opinion?

15          **A.    We had already reviewed several pieces of**  
16   **legislation by that time. So it was an indicator that**  
17   **Missouri law could be changing, and that we needed to**  
18   **have some thoughts in place about how we would**  
19   **implement whatever statute was enacted.**

20          Q.    Did you ever receive a response from legal  
21   about the review of the Montgomery decision?

22          **A.    I don't know. Not in a legal, formal**  
23   **opinion that I could recall.**

24          Q.    Did you have a further discussion with  
25   Mr. McSwain, or any other board members, about the

1 decision?

2 **A. No.**

3 Q. And what actions did you take after  
4 Montgomery, but before Senate Bill 590 was signed into  
5 law, to address JL WOP within the Division of Probation  
6 and Parole?

7 **A. None.**

8 Q. None?

9 **A. Other than review of the legislation that**  
10 **was coming down the pike.**

11 MS. BREIHAN: Can we just take a quick  
12 five-minute break?

13 (A break was taken.)

14 MS. BREIHAN: Back on the record.

15 BY MS. BREIHAN:

16 Q. You had mentioned that one of your duties  
17 and responsibilities was reviewing proposed  
18 legislation, and you did that in the context of  
19 juveniles life without parole, correct?

20 **A. Yes.**

21 Q. And who would typically ask you to do these  
22 legislative reviews?

23 **A. It's on behalf of the department, our**  
24 **budget and planning unit sends them to designated staff**  
25 **in the Department of Corrections to look at fiscal**

1     **impact on each division. Or to point out any**  
2     **difficulties in implementation that we saw. Or in**  
3     **conflict with another statute that might be**  
4     **problematic.**

5             Q.     And who in the budget and planning group  
6     would typically reach out to you to do a legislative  
7     review?

8             A.     **It depends on whoever the fiscal note**  
9     **coordinator is.**

10            Q.     And there was an assumption worked into  
11    that question. So would they reach out directly to  
12    you? Or would it go through Mr. McSwain or somebody  
13    else?

14            A.     **It would be directly to me. Or whoever was**  
15    **assigned at that point in time.**

16                    I didn't do it from the very start. I  
17    **think I started doing them maybe in 2015.**

18            Q.     Is there any reason why you didn't start  
19    them right away?

20            A.     **When I started as board operations**  
21    **director?**

22            Q.     Yes.

23            A.     **They were assigned to somebody else.**

24            Q.     Who was it assigned to?

25            A.     **Cora Haines.**

1 Q. And what was her title at the time?

2 A. Program compliance specialist.

3 Q. Is she still with the Department of  
4 Corrections?

5 A. Yes. For a minute. She's getting ready to  
6 transfer to a district office in Farmington.

7 (Deposition Exhibit No. 7 was marked for  
8 identification.)

9 BY MS. BREIHAN:

10 Q. I'll hand you Exhibit 7. Single sheet,  
11 front and back, marked AGO169 through 170.

12 Do you recognize this document?

13 A. Yes.

14 Q. And it looks like it's an email chain; is  
15 that fair to say?

16 A. Yes.

17 Q. Mr. McSwain forwarded you an email from  
18 Jeff, initially on May 24, 2016, asking for you to  
19 review and comment on his behalf, correct?

20 A. It looks like it was sent to Julie Kempker  
21 and then I was copied.

22 Q. Okay. So Mr. McSwain receives a request  
23 from Jeff Earl to review Senate Bill 590, and he then  
24 forwards it to Julie Kempker, and she forwards it to  
25 you?



1           **A.     Yes.**

2           Q.     And who's she?

3           **A.     The state supervisor of Probation and**  
4 **Parole.**

5           Q.     Would she be doing legislative reviews?

6           **A.     Well, Julie Kempker, myself, and**  
7 **Peg McClure, the assistant division director, kind of**  
8 **have those combined, shared duties. Although it's my**  
9 **primary responsibility, they're kind of backups. Or if**  
10 **she sees something that I missed, she may comment or**  
11 **add to.**

12          Q.     And you're talking in present tense? Do  
13 you still do legislative reviews for the board?

14          **A.     Yes. For the division. Not just the**  
15 **board.**

16          Q.     The Division of Probation and Parole?

17          **A.     Yes.**

18          Q.     So did you have any conversations with  
19 Mr. McSwain or Ms. Kempker about this request for a  
20 bill review?

21          **A.     I don't remember.**

22          Q.     Are you familiar with Senate Bill 590?

23          **A.     Yes.**

24          Q.     And do you remember reviewing it when it  
25 was still proposed legislation, before it was signed

1     into law?

2             **A.     Yes.**

3             Q.     Did you have any opinion about some of the  
4     questions Mr. Earl asked here?

5                     We can take it one by one.  He asked:  Do  
6     you feel that the board is able to accurately make a  
7     judgment on these juvenile cases?

8                     What is your answer to that question?

9             **A.     It was my opinion at the time, and it's**  
10    **still my opinion, that the way the statute is worded,**  
11    **and given the resources that the board has, it is very**  
12    **difficult.**

13            Q.     Okay.  And what about the wording of the  
14    statute makes it difficult for the board to accurately  
15    make a judgment on these juvenile life without parole  
16    cases?

17            **A.     Well, calling it a review of the sentence**  
18    **is not something that's entrusted to a board to do.**  
19    **It's typically a court that would review a sentence.**

20            Q.     So in your opinion, the phrase "review of  
21    sentence" meant something different than just a typical  
22    parole review, or review for release, something like  
23    that?

24                     Is that fair to it say?

25            **A.     Yes.**

1           Q.    And what in your mind is the distinction  
2   between those two different phrases?

3           A.    Well, a review of a sentence, to me, is a  
4   determination on whether or not the sentence was  
5   appropriate, as opposed to an evaluation of an offender  
6   for his readiness for parole.

7           Q.    So is it your opinion, then, that because  
8   of the wording in the statute, the board was supposed  
9   to be reviewing whether the life without parole  
10   sentence was appropriate for the juvenile offenders,  
11   rather than whether they were ready for release without  
12   being a risk to themselves or others?

13          A.    No. I believe the board's function, based  
14   upon the senate bill and the statute, was still to  
15   determine readiness for release.

16          Q.    So the board isn't doing a review of the  
17   sentence?

18          A.    No.

19          Q.    They're doing --

20          A.    They're doing a parole consideration  
21   hearing.

22          Q.    Aside from that phrase "review of their  
23   sentence" -- and that might not be the exact  
24   wording -- but aside from that phrase, are there any  
25   other issues in the wording that, in your opinion,

1 would make it difficult for the board to accurately  
2 make a judgment on these cases?

3           **A. The individual elements that were outlined**  
4 **in the statute are fairly subjective, in my opinion,**  
5 **and difficult to evaluate.**

6           Q. Anything else in the wording of the bill  
7 itself that makes it difficult for the board to  
8 accurately make a judgment on these cases?

9           **A. Not that I can remember. Like I said, I've**  
10 **been away from it for a while.**

11           Q. And at some point we'll get out the bill  
12 itself, and it will make it a little bit easier to talk  
13 about these things concretely.

14           You also mentioned one thing that would  
15 make it hard for the board to accurately make a  
16 judgment on these cases was lack of resources; is that  
17 correct?

18           **A. Uh-huh.**

19           Q. Can you talk about what you mean by that?

20           **A. The Department of Corrections doesn't have**  
21 **access to be able to do in-depth psychiatric or**  
22 **psychological evaluations on offenders, or to refer**  
23 **offenders, unless they are severely mentally ill.**

24           I don't know how the board -- I don't even  
25 know if there would be a resource to gauge maturity

1 level at the time the offense was committed.

2 So a concern in terms of resources was  
3 whether or not we would even have access to any of the  
4 information at the time of conviction that may be  
5 helpful to gauge progress in any of those areas.

6 Q. You talk about not having resources for  
7 in-depth psychological or psychiatric evaluation; is  
8 that something, in your mind, that would be necessary  
9 in order to make an accurate judgment on these cases?

10 A. Not necessarily.

11 Q. And aside from the difficulty in having  
12 access to materials to measure maturity at the time of  
13 the underlying offense, or an independent evaluation  
14 done of inmates eligible now for parole under the  
15 change in the law, are there any other specific  
16 resource-based issues that you saw that would impede  
17 the board's ability to make an accurate judgment on  
18 these cases?

19 A. No.

20 Q. Has the Department of Corrections or the  
21 division done anything to address either of these  
22 resource-based issues?

23 A. Outside of providing kind of some guides  
24 for IPOs to use to get at some of the elements, and  
25 creating a documentation sheet for the analysts and the

1 board to use to make sure that they were asking  
2 questions that could get some of those factors, no.

3 (Deposition Exhibit No. 8 was marked for  
4 identification.)

5 BY MS. BREIHAN:

6 Q. I'll show you what I've marked as  
7 Exhibit 8. I'll give you time to look at it.

8 Do you recognize this email and memo?

9 A. Yes.

10 Q. And it looks like the first -- this is  
11 Exhibit 8, and it's Bates-labeled AG01273 through 1275.

12 The first page looks like an email from  
13 you, to Mr. McSwain and Julie Kempker, on May 26th,  
14 2016, correct?

15 A. Yes.

16 Q. And the subject line is SB 590, JL WOP  
17 analysis?

18 A. Correct.

19 Q. So it looks like you're sending a memo in  
20 response to Mr. Earl's request for a review of Senate  
21 Bill 590, correct?

22 A. Yes.

23 Q. And then the memo is the second and third  
24 page of this exhibit.

25 Did you prepare this memo?

1           **A.     Yes.**

2           Q.     So at some point between Exhibit 7, the  
3 email from McSwain to Kempker, and this memo,  
4 Exhibit 8, you had a conversation with McSwain or  
5 Kempker about you taking it over the bill review?

6           **A.     I don't remember, but it was likely if I**  
7 **completed the memo.**

8           Q.     And who did you talk to in conducting this  
9 analysis of Senate Bill 590?

10          **A.     Jay Boresi.**

11          Q.     Anyone else?

12          **A.     Probably Steve Mueller.**

13          Q.     Anyone else?

14          **A.     Not that I can remember.**

15          Q.     And how many times did you talk to  
16 Mr. Boresi about review of Senate Bill 590?

17          **A.     I don't remember.**

18          Q.     Do you remember what he told you about his  
19 opinion of the bill?

20          **A.     I don't believe that he had an opinion of**  
21 **the bill.**

22                   I think what I talked to him more about is,  
23 do we have a parallel process already in place that we  
24 could use as a model in conducting parole hearings  
25 where additional elements are required to be captured

1       or considered.

2               Q.     And what did he tell you?

3               A.     He agreed with me, that following the  
4       practice that was implemented following a court order  
5       on females who had domestic violence background, and  
6       had committed murders, would be a good practice.

7               Q.     And we see illusions, on the second page of  
8       the memo, the first full paragraph says, "The board  
9       does have a precedent for evaluating the statutory  
10      element that refers to the level of maturity or mental  
11      status at the time of the offense," correct?

12              A.     Uh-huh.   Yes.

13              Q.     And then you talk about in response, "The  
14      court orders on females who were convicted of capital  
15      murder, who were victims of domestic violence, the  
16      board relied upon witness statements, medical and  
17      mental health records, and the offender's own testimony  
18      to assess maturity factors that could potentially  
19      influence the offender at the time of the offense,"  
20      correct?

21              A.     Yes.

22              Q.     I don't think I lived in Missouri when this  
23      domestic violence parole review kind of process was  
24      underway.

25                      Could you explain to me a little bit of the



1 context behind that?

2 A. I don't know the context. I just know that  
3 there were court rulings that these women were now able  
4 to be considered parole-eligible if we could determine  
5 that there was domestic violence in their background.

6 And I may have that wrong.

7 And then through other court decisions, it  
8 kind of ordered the board to consider additional  
9 factors when evaluating those women for parole.

10 Q. And you said the board relied upon witness  
11 statements.

12 Where did it obtain these witness  
13 statements?

14 A. It didn't seek to obtain them. We required  
15 the IPO to go back to the court and obtain transcripts,  
16 if they could, or other materials.

17 We kind of worked through our field office  
18 and said: Go back and see what you can find on these  
19 cases. Because in many instances our agency hadn't  
20 been involved prior to entry. There was no presentence  
21 investigation. So there was nothing.

22 There was kind of a barebones commitment  
23 report that described the circumstances of the offense  
24 and nothing else.

25 So it was through the institutional parole

1 staff, or it may have been in information that either  
2 the offender, or an offender's delegate may have  
3 presented at the time of the hearing, or prior to the  
4 hearing.

5 In some instances the women had sought  
6 clemency, and so we had information in the clemency  
7 investigation that we could use.

8 As well as developed a set -- I think they  
9 did, anyway, I didn't have female offenders in my  
10 prison at the time, nor did I participate in any of  
11 those hearings -- but I believe there were a set of  
12 questions that they developed, and separate sections in  
13 the prehearing report, to address domestic violence  
14 issues and victimization.

15 Q. So aside from testimony that the inmate or  
16 their delegate might have offered, or what might be  
17 available from a clemency investigation or trial  
18 transcript, were witness statements obtained in any  
19 other manner?

20 A. Not independently by the board. We just  
21 used whatever material might have been available at the  
22 time the crime was committed. Or any trial.

23 Q. And what about medical and mental health  
24 records, where would the board or parole staff obtain  
25 those?

1           **A.     They would obtain those from Department of**  
 2           **Corrections' contracted medical or mental health staff.**

3           Q.     Anywhere else?

4           **A.     Not that they would have sought.**

5           Q.     So it's clear you saw some parallels with  
 6           the domestic violence situation and with the JL WOP  
 7           situation, correct?

8           **A.     Yes.**

9           Q.     Were there any changes in the  
 10          justifications for denial that the board was permitted  
 11          to identify in the domestic violence context?

12          **A.     No.**

13          Q.     They weren't prohibited from denying based  
 14          on circumstances of the offense?

15          **A.     For which?**

16          Q.     For the domestic violence?

17          **A.     Yes, they were prohibited by court order.**  
 18          **In some of the cases, maybe not all of them. I don't**  
 19          **remember.**

20                   It seems like we did that, and then the  
 21          court said, no, you can't use that. Go back and give a  
 22          different reason. Or maybe even conduct another  
 23          hearing. That's been a long time ago, but I remember  
 24          that being an issue.

25          Q.     The next paragraph of your memo states,

1 "That risk reduction is assessed using the validated  
2 tool."

3 What tool are you referring to there?

4 **A. The salient factor score.**

5 Q. So is the salient factor score used to  
6 assess the -- to conduct a risk assessment of juvenile  
7 offenders serving life without parole?

8 **A. It's used to assess all offenders that are**  
9 **under consideration for parole.**

10 Q. And who actually calculates, computes that  
11 score?

12 **A. The IPO.**

13 Q. Working backwards, go back to the first  
14 page of that memo that you prepared on May 26th, 2016.  
15 You outline five bullet points of factors that the  
16 board must consider during these Senate Bill 590  
17 hearings.

18 Where did you get those five bullet points  
19 from?

20 **A. From the proposed legislation. The bill.**  
21 **Itself.**

22 Q. Are these five bullet points the only  
23 additional factors that the board must consider when  
24 conducting the Senate Bill 590 hearings?

25 **A. No.**

1           Q.    And there are other factors outlined in  
2   565.033, correct?

3           **A.    Yes.**

4           Q.    And then you say also, "In addition to the  
5   factors considered by the court at the time punishment  
6   is determined."

7                   Does that mean that in addition to the  
8   factors considered at the time of sentencing?

9           **A.    Yes.**

10          Q.    Do you understand that the plaintiffs in  
11   this case received mandatory life without parole  
12   sentences?

13          **A.    Yes.**

14          Q.    Do you understand the implications that  
15   would have, about whether or not a separate sentencing  
16   hearing and mitigation stage of the trial would be  
17   held?

18          **A.    Say that again, please.**

19          Q.    Do you understand that the implications of  
20   a mandatory sentence, and how that would impact whether  
21   a separate sentencing hearing would be held where  
22   mitigation evidence could be presented?

23          **A.    I still don't understand your question.**

24          Q.    Well, what's your understanding of how a  
25   trial proceeds generally?

1                   After -- let's say a jury finds an  
2 individual guilty of a crime. What's your  
3 understanding of what happens next?

4                   **A.     Either a judge or a jury pronounces**  
5 **sentence.**

6                   Q.     And is it your understanding that there is  
7 additional evidence adduced at the time that relates to  
8 the appropriate sentence?

9                   **A.     There could be.**

10                  Q.     Do you know if that was done in the case of  
11 these juvenile offenders serving life without parole?

12                  **A.     No.**

13                  Q.     And you indicate that, "Through existing  
14 procedure and practice, the items above are presented  
15 during the parole consideration process to a degree."

16                         How are they not presented during parole  
17 consideration process?

18                  **A.     Where are you at on the memo?**

19                  Q.     The first sentence after the bullet points.

20                  **A.     Well, do you want me to go through each one**  
21 **or just in general?**

22                  Q.     If that's easiest, sure.

23                  **A.     In general, the department, through their**  
24 **classification and their assessment, and looking at the**  
25 **circumstances of the offense and institutional conduct**

1 through the parole -- pre-parole hearing interview, and  
2 the interview with the offender themselves, I think you  
3 can determine many of those factors.

4 Q. So where do you see gaps?

5 A. The gap in bullet 2, in being able to grow  
6 and increase maturity at the time of the offense, one  
7 of the factors you might look toward is institutional  
8 adjustment and accountability. But I don't know that  
9 you would know whether or not the person at the time  
10 that the crime was committed was immature or  
11 overly mature for their age.

12 Q. And what steps did you take to sort of try  
13 to fill that gap or implement a process that would fill  
14 that gap that you identified?

15 A. Well, we looked at our current hearing  
16 report, and looked at different questions that you  
17 could ask, during either the pre-parole hearing  
18 interview, or during the parole hearing itself, to try  
19 to make that determination. Or get a sense from the  
20 offender kind of where they were at the time that they  
21 committed the crime.

22 Q. So just continuing or preparing a sort of  
23 script for IPOs to follow during prehearing interviews;  
24 is that a fair summary of what you just said?

25 A. We added to our interview an assessment

1        worksheet that's used in preparing a parole hearing.

2        It's kind of their interview guide.

3                Q.     Were IPOs, prior to that, already using a  
4        worksheet when conducting prehearing interviews?

5                A.     Yes.

6                Q.     And then it was supplemented or modified in  
7        some way?

8                A.     Yes.

9                Q.     Prior to Senate Bill 590 being proposed and  
10       passed, how did the board assess mental status and  
11       maturity level?

12              A.     Prior to the bill?

13              Q.     Uh-huh.

14              A.     They would use the same factors. They  
15       would look at institutional conduct. Any formalized  
16       assessments that were available.

17              Q.     Anything else?

18              A.     Not that I can think of.

19              Q.     So you said when you were doing this review  
20       of Senate Bill 590 you talked to Jay Boresi and  
21       Steve Mueller, correct?

22              A.     Yes.

23              Q.     Did Mr. Mueller agree with your evaluation  
24       of the bill?

25              A.     I don't know if he did or didn't.



1           Q.    Well, what did you -- what did you talk to  
2   him about in the context of this legislative review?

3           A.    We talked about how you would  
4   implement -- what you would do if there were multiple  
5   sentences?

6                   What are steps that the board or the IPOs  
7   could take during the interviews to ask certain  
8   questions to try to meet what is outlined in statute?

9           Q.    And what did he say?

10          A.    I don't remember a conversation. I mean, I  
11   think we generally agreed.

12          Q.    Did you consult anybody else about what  
13   questions might be appropriate or necessary to ask in  
14   order to set out the information required by the  
15   statute?

16          A.    Not at this time.

17          Q.    But at some other point in time you did?

18          A.    I believe we had a discussion at the  
19   analysts group about it.

20          Q.    And this memo was forwarded on to Mr. Earl,  
21   correct?

22          A.    I don't know if it was or wasn't. Probably  
23   so.

24                   (Deposition Exhibit No. 9 was marked for  
25   identification.)

1 BY MS. BREIHAN:

2 Q. I'll show you what I've marked as  
3 Exhibit 9.

4 So does -- do you recognize this Exhibit 9  
5 that's been Bates-stamped AG01276 to 1278?

6 A. Yes.

7 Q. Does this refresh your recollection whether  
8 the memo you prepared regarding an analysis of  
9 Senate Bill 590 was forwarded to Jeff Earl?

10 A. Yes.

11 Q. Did Mr. McSwain or Julie Kempker make any  
12 revisions before it was forwarded to Mr. Earl?

13 A. I don't remember.

14 Q. Well, if we can take time and compare  
15 Exhibit 8 and Exhibit 9 line by line, it doesn't appear  
16 to me there were any changes.

17 A. I don't remember there being any changes.  
18 I mean, I wouldn't thought there would be.

19 Q. They generally relied on your analysis and  
20 judgment?

21 A. Yes.

22 Q. Before we go on, I want to pull the lens  
23 back a little bit and talk to you about what the parole  
24 interview process for the typical adult offender. So  
25 not necessarily for any juvenile offenders who's

1 impacted by the Miller versus Alabama decision and  
2 Senate Bill 590.

3 Are you generally familiar with how the  
4 board conducts parole review hearings?

5 **A. Yes.**

6 Q. Can you walk me through the process,  
7 starting from when eligibility is determined, through  
8 when notice of a decision is conveyed to an inmate?

9 **A. Sure.**

10 Upon arrival at the Department of  
11 Corrections, the face sheet is forwarded to Probation  
12 and Parole. The parole analyst looks at the sentence  
13 structure. Determines a hearing date. And a notice is  
14 sent to the offender. Usually within 60 to 90 days.  
15 Telling them the month and the year that they will  
16 appear before the board.

17 If there are special sentencing  
18 considerations, such as a parole ineligibility for a  
19 number of years, or a certain percentage that they must  
20 serve, the analyst generally cites the statute at the  
21 bottom of the notice and tells them why the hearing is  
22 not, quote/unquote, according to the published hearing  
23 schedule, because it's outside of those -- of that  
24 matrix.

25 So, for example, for low-level felonies, a

1 three-year sentence is heard in three months. Four  
2 years, four months. But if you have a parole  
3 restriction or parole ineligibility, you fall off of  
4 that schedule, and you fall into a different set of  
5 circumstances.

6 So after that offender receives the notice,  
7 once his hearing is close, within probably two months,  
8 they'll get the specific day that their hearing will be  
9 scheduled. And that's -- that's not based on an  
10 analyst's action, it's based on we set a calendar of  
11 hearings throughout the month at the various  
12 institutions, and then the institutional staff just  
13 fill up the days.

14 After -- about a month beforehand, the IPO  
15 meets with an offender, prepares the prehearing report,  
16 does the risk instrument. The day of the hearing, the  
17 offender appears, is explained the process. If there  
18 are delegates or victims, they're advised of their role  
19 during the hearing. And then the board uses generally  
20 the hearing report to script the questions.

21 That report covers the official version of  
22 the offense, the offender's version of the offense, any  
23 court records, such as were they on supervision prior  
24 or not. If they were on supervision, any violations or  
25 positive behavior that was exhibited during that time

1 of supervision.

2 The arrest and criminal history is  
3 discussed with the offender. And anything that's  
4 significant or looks to be a pattern is generally  
5 talked about.

6 Or if they are more serious offenses, they  
7 question them about those.

8 Any detainers or pending charges are  
9 discussed.

10 Then we kind of go into discussing  
11 substance abuse, mental health, aggressive behavior,  
12 institutional conduct, education, work history, any  
13 programs or restorative justice they've been involved  
14 in.

15 Their family support. Their community  
16 plan. A lot of that social history kind of  
17 information. Medical, mental health needs. Any  
18 assessments. Any need for future treatment.

19 A lot of board members -- and most talk  
20 about kind of motivation. Like, what motivated someone  
21 to commit a crime, or what was going on in their life  
22 at that point in time, and how they saw themselves at  
23 this point in time, and maybe what decisions would be  
24 different in the future.

25 They then usually go over the eligibility

1     dates, like the minimum eligibility date. And then the  
2     longest date that the board can hold them, which is  
3     either a conditional release date or a maximum  
4     release date.

5             Talk about special conditions that they  
6     might consider, and try to gauge from the offender kind  
7     of their buy-in, and what they're willing to do, and  
8     how they think they might do that upon release.

9             Then following the conclusion of the  
10    hearing, the panel makes a recommendation. And  
11    depending on the type of offense and offense class, the  
12    decision -- and the type of decision, that may be final  
13    at the hearing panel level, or it may be referred to  
14    majority board.

15            If it's referred to majority board, it  
16    follows a workflow, wherein the file is passed until  
17    majority is reached.

18            And once that decision is finalized, the  
19    clerical staff prepare the notice, sends it  
20    electronically to the institution, and the IPO delivers  
21    it personally.

22            Q.    And you've personally participated in  
23    parole hearings, correct?

24            A.    Yes.

25            Q.    So you know about this process, not only

1 from your years as parole operations director or board  
2 operations director, but also as parole officer on the  
3 ground?

4 **A. Yes.**

5 Q. So the eligibility determination, is that  
6 made upon arrival upon admission to the Department of  
7 Corrections? The numbers crunching about when an  
8 inmate is eligible for their first parole?

9 **A. It's done by a parole analyst after we**  
10 **receive the face sheet and the sentencing documents.**

11 Q. So if an inmate is committed to the  
12 Department of Corrections and is serving a  
13 non-parolable sentence, is there any sort of tracking  
14 by the Division of Probation and Parole?

15 **A. It depends. On whether or not there would**  
16 **be a period of supervised release. So a parole**  
17 **ineligible sentence could have a conditional release**  
18 **term, and so we would track those. Not for any review**  
19 **by the board, but to make sure that the transition to**  
20 **the field is smooth, and that we investigate home**  
21 **plans, and get them on field supervision.**

22 Q. So for someone serving a life without  
23 parole sentence I assume that would not be done; is  
24 that fair to say?

25 **A. They would receive a decision telling them**

1     that because they're not eligible for parole, their  
2     release date is set at their maximum release date, and  
3     there would be no further review.

4             Q.     So what's the maximum release date for  
5     someone serving life without parole?

6             A.     They would just say that they're -- if it  
7     it's a life without, they would just state that because  
8     you've been convicted of this, and you're not eligible  
9     for parole. I mean, they wouldn't give a date in those  
10    instances.

11            Q.     So those inmates serving life without  
12    parole would not be tracked by the Division of  
13    Probation and Parole, correct?

14            A.     No.

15            Q.     And you talked about the prehearing  
16    interview that's conducted by the IPO, correct?

17            A.     Yes.

18            Q.     And that interview is governed, in part, at  
19    least, by the OPP policy and procedure, correct?

20            A.     Yes.

21                    (Deposition Exhibit No. 10 was marked for  
22    identification.)

23    BY MS. BREIHAN:

24            Q.     I'll hand you Exhibit 10.

25                    Do you recognize this document? Take as



1 much as you need to flip through it.

2 It's AG0003584 through 3593.

3 A. Yes.

4 Q. And what is this?

5 A. This is the prehearing report procedure.

6 Q. Do you know when this was last updated?

7 A. No. The date that you have. I'm not sure  
8 if there's a more recent revision.

9 Q. You left as the board operations director  
10 position April 2017, correct?

11 A. Yes.

12 Q. Prior to your transition away from that  
13 position, to your knowledge, has this procedure been  
14 changed?

15 A. I believe that -- well, let me tell you a  
16 little bit about just the process.

17 There may be revisions to this document  
18 that are just not published. And so it would be my  
19 opinion that this procedure probably was looked at in  
20 conjunction with changes to the criminal code. And  
21 whether or not those are in process, or have been  
22 updated, I do not know.

23 Q. Well, I trust that your counsel will  
24 produce any, to the extent that they are implemented,  
25 as revised.

1                   And you talked about a worksheet that the  
2   IPO uses to guide the prehearing interview, correct?

3                   **A.    Yes.**

4                   Q.    Is that the interview and assessment  
5   worksheet that's referred to as an attachment on the  
6   very last page of this exhibit?

7                   **A.    Yes.**

8                   Q.    And then what happens to that worksheet  
9   after it's completed by the IPO during the prehearing  
10   interview?

11                  **A.    It's probably only kept until the hearing**  
12   **is over. And then it might be shredded.**

13                   We don't keep files on institutional  
14   offenders in an institutional parole office. It  
15   wouldn't generally be forwarded from one IPO to the  
16   next if they transferred. It's just used for the  
17   preparation for the report, and available when the  
18   supervisor's reviewing that. But it's not retained as  
19   an official document.

20                  Q.    Okay. So is it correct to say that the IPO  
21   conducts the interview, fills out the worksheet, and  
22   then produces a draft of the report, along with the  
23   worksheet to his or her supervisor for review?

24                  **A.    Yes.**

25                  Q.    And then what happens to the report after

1 it's approved by the IPOs supervisor?

2 **A. It's copied or sent to the board to be**  
3 **available for the hearing.**

4 Q. And it becomes a part of the inmate's  
5 parole file, correct?

6 **A. Yes.**

7 Q. Does the inmate ever get to see that  
8 report?

9 **A. No.**

10 Q. Does the inmate ever get to see the  
11 worksheet that is used to generate that report?

12 **A. No.**

13 Q. And what else is in an inmate's parole  
14 report file besides this prehearing report?

15 **A. The Central Office parole file.**

16 Q. Is there another parole file?

17 **A. Well, if he's under field supervision,**  
18 **there's a field supervision file, which is different.**

19 Q. And just, I mean, throughout today, I'm  
20 really talking about inmates who are currently  
21 incarcerated that are being reviewed for release.

22 So, I don't know, I assume they would not  
23 have a field supervision file?

24 **A. If they were under supervision, the field**  
25 **reports would have been forwarded to their confined**

1     **file.**

2             Q.     If they are under supervision prior to  
3     incarceration?

4             **A.     Yes.**

5             Q.     Do you know if any of these kids were under  
6     supervision by the Department of Corrections prior to  
7     being incarcerated for their current sentences?

8             **A.     No.**

9             Q.     So we're just talking about the central  
10     parole file.

11             What is in that other than the prehearing  
12     report?

13             **A.     In the file we have the sentence and  
14     judgment paperwork.**

15             We'd have the adult face sheet.

16             We would have the diagnostic assessment  
17     instrument information.

18             You would have conduct violation reports.

19             Any special reports prepared by an IPO.

20     Any assessments that were done.

21             The victim profile information is put in  
22     that file, because we share our files with our victims  
23     services coordinator so notifications can occur.

24             If there are -- if there's correspondence,  
25     either generally in support, or in opposition, that's

1     kept in the file.

2                   Any offender notices that are generated are  
3     kept in that file.

4                   And the board action sheet.

5                   (Deposition Exhibit No. 11 was marked for  
6     identification.)

7     BY MS. BREIHAN:

8                   Q.     I'll show you Exhibit 11.  It's  
9     Bates-stamped AGO00060 and 61.

10                   Is this the board action sheet you're  
11     referring to?

12                   A.     Yes.

13                   Q.     And this board action sheet is used in  
14     every single parole review hearing that the board  
15     conducts?

16                   A.     Yes.

17                   Q.     You talk about assessments as one of the  
18     things that might be the central parole file.

19                   What do you mean by assessments?

20                   A.     If there was field materials, such as  
21     things gathered during a sentencing report, or a  
22     presentence investigation, any assessments done by  
23     outside people that added to that assessment, it would  
24     have likely ended up in our file as well.

25                   If there were any institutional assessments

1 conducted, most of them are electronic, but mental  
2 health will fill out a summary. The mental health  
3 staff at the prison will fill out a summary for us, if  
4 someone is a medium to high classification on the  
5 mental health scale, giving us a diagnosis, a treatment  
6 plan, and noting any medications.

7 And medical will do the same thing. Kind  
8 of give us -- not a specific diagnosis -- but will tell  
9 us the medications an offender might be taking. We  
10 don't get access to the medical diagnosis, but we can  
11 usually figure out what they're for.

12 Q. Is the inmate given notice that their  
13 medical and mental health information is being shared  
14 with the board parole staff?

15 A. Yes.

16 Q. When are they given notice of that?

17 A. They're given notice by the medical or  
18 mental health people. And I believe they sign a  
19 release.

20 Q. And you said you share the file with the  
21 victims services office?

22 A. Yes.

23 Q. Is the victims services office, are they  
24 like a division of the Division of Probation and  
25 Parole?

1           **A.    They're under the office of the director**  
2           **for the department.**

3           Q.    Is the inmate given notice when their file  
4           is shared with the victims services office?

5           **A.    No.**

6           Q.    Who else has access to the central parole  
7           file?

8           **A.    No one.**

9           Q.    So the --

10          **A.    I guess the Attorney General's Office.**

11               MR. CRANE:   Only on occasion.

12          BY MS. BREIHAN:

13               Q.    So the only individuals who have access to  
14           the central parole file are board members, parole  
15           analysts, and the victims services office?

16               **A.    And the clerical staff that -- in support.**

17               Q.    Sure.   The inmates don't have access to  
18           their own parole file?

19               **A.    No.**

20               Q.    Does the prosecutor, for the underlying  
21           offense, have access to the parole file?

22               **A.    No.**

23               Q.    Is information generally shared from the  
24           parole file with the prosecutor's office?

25               **A.    No.**

1           Q.    Is information generally shared from the  
2 parole file with the victims or victim's  
3 representatives?

4           **A.    No.**

5           Q.    And you mentioned that hearings are  
6 scheduled by institutional staff, correct? Like, the  
7 specific dates?

8           **A.    Yes.**

9           Q.    Are hearings conducted by the entire board?  
10 Do they all sit down and interview them in person?

11          **A.    No.**

12          Q.    They're conducted by a panel, correct?

13          **A.    Correct.**

14          Q.    Of three people?

15          **A.    Yes.**

16          Q.    Consisting of just one board member?

17          **A.    Yes.**

18          Q.    Who else sits on the panel?

19          **A.    The parole analyst. And the institutional**  
20 **supervisor.**

21          Q.    Has there, to your knowledge, ever been a  
22 hearing conducted by the entire board?

23          **A.    Not by the entire board. There's been a**  
24 **panel consisting of -- solely of board members in the**  
25 **past.**



1 Q. Under what circumstances did that occur?

2 A. I believe it was a television documentary.

3 I bet you weren't expecting that one.

4 Q. Do you know when that was?

5 A. Oh, gosh, no. I don't remember. It was a  
6 very long time ago.

7 Q. Does the board -- is that the only time, to  
8 your knowledge, that the board has permitted, like,  
9 media, at a parole hearing?

10 A. I don't know. I mean, I can't say for  
11 certain.

12 Q. So the only time that there was a panel  
13 existing of exclusively board members is when there was  
14 a documentary shot in the room, correct?

15 A. That's the only one I have knowledge of.

16 Q. Do you know, generally speaking, how many  
17 of these parole hearings are conducted in person as  
18 opposed to by videoconference?

19 A. No. I don't know the exact number.

20 Q. If you had to guess, what would you say?

21 A. I would say that approximately 60 percent  
22 are by video, and 40 percent are in person.

23 Q. And have you noticed a trend at all over  
24 time with regard to how many are conducted by  
25 videoconference?

1           **A.     Absolutely.**

2           Q.     What's the trend that you've noticed?

3           **A.     The trend has been as we have expanded**  
4 **videoconferencing. More hearings are held through**  
5 **video than in person.**

6           Q.     Probably makes it easier to schedule more  
7 hearings that way; is that correct?

8           **A.     Yes.**

9           Q.     And saves some money, not having to travel  
10 across the state, correct?

11          **A.     I think that they likely have better**  
12 **decisions, because you're not having to travel every**  
13 **day, and that you can -- you're not looking to get on**  
14 **the road.**

15          Q.     So you think that the -- just the sort of  
16 wear and tear of being on the road could impair panel  
17 members' or board members' judgment?

18          **A.     Not judgment. I think fatigue.**

19          Q.     Who decides whether a hearing's going to be  
20 in person or by video?

21          **A.     Ultimately, the offender. Or the victim**  
22 **sometimes. If the victim opposes, you know, the video.**  
23 **Those are the only two parties.**

24          Q.     So if a -- hypothetically, an inmate wants  
25 to have his hearing by video, but the victim wants it

1 in person, what happens?

2 **A. The hearing will be held in person.**

3 Q. Against the inmate's objection?

4 **A. Yes.**

5 Q. And the purpose of the parole hearing is to  
6 review an inmate's readiness for release, right?

7 **A. Yes.**

8 Q. What happens if the victim wants it by  
9 video and the inmate wants it in person?

10 **A. We'll have it in person.**

11 Q. Are there any circumstances under which, in  
12 your opinion, a parole hearing should be conducted in  
13 person rather than by video?

14 **A. Yes. If the offender does not seem capable**  
15 **of understanding how he's going to communicate with the**  
16 **board through a TV screen. And I would be talking**  
17 **either developmentally disabled offenders, or mentally**  
18 **ill offenders, it would be in the best interest to**  
19 **conduct those onsite.**

20 Q. And so who's tasked with making that  
21 assessment about an inmate, as to whether or not they  
22 are competent or able-bodied enough to be able to  
23 conduct their hearing by videoconference?

24 **A. Usually it's in consultation with mental**  
25 **health staff at the facility.**

1                   And oftentimes the mental health person at  
2   the facility will ask to be at the hearing to assist  
3   the offender and keeping focus on the reason that  
4   they're there.

5           Q.    So it's the -- the IPO's supposed to  
6   consult with mental health staff if there's a concern?

7           A.    Yes.

8           Q.    What's the average duration of a parole  
9   review hearing?

10          A.    I don't know the average. To be exact.

11          Q.    And I think earlier in the day you talked  
12   about maybe a cap on the number of hearings scheduled?

13          A.    Yes.

14          Q.    Is that, like, a monthly cap? Or a weekly  
15   cap?

16          A.    It's a daily.

17          Q.    Daily?

18          A.    Per facility.

19          Q.    What's the daily per-facility cap?

20          A.    I believe it is now 18 per day.

21          Q.    And that's changed over time?

22          A.    Yes.

23          Q.    What was it before it was 18?

24          A.    It was 14.

25          Q.    And when did it change to 18?

1           **A.     When Chairman Jones made that action.**

2           Q.     So Chairman Jones raised it from 14 to 18?

3           **A.     Yes.**

4           Q.     So that would have been within the last  
5 year?

6           **A.     Yes.**

7           Q.     That seems like a lot of hearings to  
8 conduct in a day.

9                     In your opinion, is that a -- would that  
10 provide adequate time to conduct hearings for an inmate  
11 to determine whether they're ready to be released from  
12 prison?

13           **A.     I think 14 is too many.**

14           Q.     So where does this number come from? Is  
15 there a best practice standard out there, X number of  
16 hearings?

17           **A.     I don't know if there is or isn't. I think**  
18 **it probably depends on each board, and how they conduct**  
19 **hearings, and what components exist.**

20                     I know for our practices, just in looking  
21 at how good are you at number 1 versus number 15, it  
22 was Chairman McSwain's belief that limiting the cap  
23 would promote better decision-making and more  
24 flexibility in the day and in the schedule.

25           Q.     So that the fatigue you mentioned sort of

1 comes into play, again, when you're talking about doing  
2 18 hearings, or even 14 hearings a day, correct?

3 **A. In my opinion, yes.**

4 Q. And who can appear at a hearing?

5 We talked about mental health staff, if  
6 it's appropriate, in their opinion, to assist with a  
7 cognitively disabled or limited inmate.

8 We talked about the inmate themselves and  
9 their delegate.

10 Who else has a right to be present at a  
11 parole hearing?

12 **A. The victim of the offense.**

13 **Law enforcement that investigated.**

14 **And the prosecuting attorney. Or custody**  
15 **staff, if there's a need.**

16 Q. And how often, in your experience, do  
17 prosecutors show up at parole hearings generally?

18 **A. I really don't know. My tenure was at a**  
19 **very minimum security facility that didn't hold**  
20 **generally high-profile offenses. And if it did, they**  
21 **already had their parole consideration hearing at the**  
22 **higher custody facility, so it didn't happen when I was**  
23 **at Tipton.**

24 Q. Fair enough.

25 How are victims or victims representatives

1 involved in the process of parole review?

2 **A. I don't know what you mean.**

3 Q. Are there any restrictions on victims'  
4 rights? Victims' ability to speak at a hearing, for  
5 example?

6 **A. The only restrictions that the board**  
7 **imposes is that they not address the offender or the**  
8 **offender's delegate directly during the hearing.**

9 Q. Are they allowed to bring a support person,  
10 or anyone else, along with them?

11 **A. Yes. Statutorily.**

12 Q. Is there any, like, limitation on the  
13 number of victims or victim's representatives that can  
14 participate in the hearing?

15 **A. Well, the restriction is embedded in**  
16 **statute, in that they have to meet the definition of a**  
17 **victim, and each can have a support person. But you**  
18 **know, if it was, for instance, one murder victim that**  
19 **had 13 brothers, all 13 brothers have the right to**  
20 **attend.**

21 Q. But if it's one victim, and their friend  
22 and their friend's cousin, it would be improper for all  
23 three to attend?

24 **A. There should only be one support person.**

25 Q. And, similarly, the inmate only gets one

1 support person, correct?

2 **A. Correct.**

3 Q. Have there been any exceptions to that one  
4 support person limit on the victim's side?

5 **A. I wouldn't know of a specific instance.**

6 Q. Do you know any exceptions to the one  
7 delegate limit on the inmate's side?

8 **A. Not that I know of.**

9 Q. Back to the role of the victim; are they  
10 allowed to take notes during the hearing?

11 **A. I've never seen it happen.**

12 Q. Do they -- they have been permitted to  
13 bring in materials to read from, for example, correct?

14 **A. Yes.**

15 Q. Are they provided with information about  
16 the inmate by the Division of Probation and Parole?

17 **A. During the hearing they hear the testimony  
18 and the questions that are answered. Prior to, they're  
19 given no more information than the general public.**

20 Q. Well, except that they're told about when  
21 the hearing is; right?

22 **A. Yes.**

23 Q. And they have some contact with the victims  
24 services office?

25 **A. Correct.**



1           Q.    Do you know what kind of communication  
2 occurs between the victims services office and the  
3 victims?

4           A.    Not specifically. I think it's general  
5 instruction about the process.

6           Q.    Do you know whether, beyond sort of general  
7 notice or instruction about the process, whether the  
8 victims services office ever prepares the victim's  
9 response for the hearing?

10          A.    What do you mean by "prepare?"

11          Q.    I don't know. I've seen that term used, to  
12 be honest with you, and I'm wondering what it means.  
13 If you don't know, that's fair enough.

14          A.    I wouldn't know specifically, other than  
15 the preparation is focused on what they statutorily  
16 have a right to provide.

17                   And, you know, maybe counseling them you  
18 can't yell at the offender. You can't scream at the  
19 board. General conduct. The expectation of how they  
20 present their testimony.

21          Q.    And the prosecutor also you mentioned has a  
22 right to be present at the hearing.

23                   Does the division of Probation and Parole  
24 provide them any information about the inmate prior to  
25 the hearing.

1           **A.     No.**

2           Q.     And what is their role intended to be at  
3 these parole review hearings?

4           **A.     They're able to offer opposition.**

5           Q.     Opposition to release?

6           **A.     To release.**

7           Q.     What about the role of the inmate's  
8 delegate; what's that role supposed to be?

9           **A.     Well, I don't know what it's supposed to**  
10 **be. I look for it to be someone who can offer some**  
11 **insight into the offender in general. How they came to**  
12 **commit a crime. What supports they're going to offer**  
13 **in the future.**

14                   And how they believe that this person  
15 has -- I don't want to use the word changed, like  
16 there's a magic wand -- but able to be a successful  
17 productive member of the community.

18                   That's what I would look for in a delegate.

19           Q.     And your initial reaction was you don't  
20 know what the delegate's role is supposed to be.

21                   Is there any sort of rule or regulation  
22 that defines what the delegate's role is?

23           **A.     Not really.**

24           Q.     Does the Blue Book talk about that at all?

25           **A.     It might. I don't recall the specific**

1 language. It might say, more or less, who is  
2 appropriate or not as a delegate.

3 Q. May a delegate speak to the hearing panel?

4 A. They're usually allowed to make a statement  
5 at the conclusion of the offender's portion of the  
6 interview.

7 Q. Are they allowed to ask questions of the  
8 panel?

9 A. It depends on the individual board member  
10 or the person conducting the hearing. Not during the  
11 offender's portion, they are not.

12 Q. So whether or not a delegate can ask  
13 questions just depends on who's conducting the hearing?

14 A. Yes.

15 Q. There's no uniform rule about the delegate  
16 being permitted to ask questions?

17 A. There is no uniform rule.

18 Q. Well, I'm confused. Because if we look at  
19 the Blue Book, Exhibit 3, it talks a little bit about  
20 the role of a delegate at a parole hearing, and you  
21 testified earlier that the Blue Book is meant to be a  
22 guide for an inmate.

23 So if I were having a hearing, and I wanted  
24 to know who my delegate could be, I might go to page  
25 six in the Blue Book, and the Blue Book says that the

1 offender's delegate may offer a statement on behalf of  
2 the offender, ask questions and provide additional  
3 information that may be requested by the hearing panel.  
4 And they may also elect to write or telephone the  
5 board, or meet with the board member at Central Office.

6 So after reading that, is this inaccurate?  
7 That they can ask questions in all instances?

8 Or maybe this is sort of refreshing your  
9 understanding and recollection about what the delegate  
10 is permitted to do at hearings?

11 **A. I believe most of the panel members**  
12 **generally ask the delegate if they have any questions.**

13 I'm not sure that all of the members ask  
14 that question. I don't think if a delegate would get  
15 asked a question that they'd say: Don't talk to us,  
16 you're done making your statement. But I wouldn't know  
17 that. I'm not on every panel.

18 Q. Have you sat in on any of the JL WOP  
19 hearings?

20 **A. No.**

21 Q. Have you reviewed any of the recordings of  
22 the hearings?

23 **A. No.**

24 Q. The only recordings, I guess you reviewed,  
25 were in connection with the investigation into Ruzicka

1 and Mr. [REDACTED], correct?

2 **A. That's not the only recordings I reviewed.**

3 Q. In, like, the last few years, are those the  
4 only ones you've reviewed?

5 **A. No.**

6 Q. Are delegates allowed to take notes during  
7 the hearing?

8 **A. No. I don't even think -- I don't believe**  
9 **they're allowed to bring items to take notes in.**

10 Q. They're not allowed to bring any outside  
11 items in?

12 **A. I don't know. They weren't when I was**  
13 **conducting hearings.**

14 Q. And then you also talked, when you were  
15 going through the process, very helpfully about how a  
16 vote might occur, that if there's a panel  
17 recommendation at the conclusion of the hearing,  
18 correct?

19 **A. Yes.**

20 Q. And then depending on the level of the  
21 offense it might be sent up for a majority vote board?

22 **A. Depending on the level of the offense and**  
23 **the type of decision.**

24 Q. So under what level of offenses or types of  
25 decisions would warrant a majority board vote?

1           A.    A decision is -- it's complicated.  So I'm  
2 going to give you what I can remember without it being  
3 in front of me.

4                   I believe that a majority board decision is  
5 required in all offenses above Class C.  In all  
6 offenses, all drug offenses that are Class B, that are  
7 of eight years or longer.  All decisions above or below  
8 the board's time-to-serve guidelines.

9           Q.    Do you remember any others?

10          A.    Yeah.  I was going slow 'cause you were  
11 writing.

12                   Hearing panel decisions that are  
13 not -- where they don't all agree.  Where there's not  
14 consensus.  And in any case that the board wants to  
15 refer it to the majority.

16          Q.    So the very last one you mentioned, any  
17 case that the board wants to refer it, is that decision  
18 made before the hearing?

19          A.    No.  That would be made by the member  
20 themselves.  To refer.  And that's any decision.  If a  
21 board member looks at it and says, I want to send this  
22 through majority, they have the option to do that.

23          Q.    So setting aside those circumstances on the  
24 non-consensus panel, just the classification of  
25 offense, why is it that those specific kinds of

1 classification of offenses are required to have a  
2 majority board decision?

3 A. I don't know the why.

4 Q. And then you said it works through sort of  
5 a workflow.

6 How is the order of the flow of the vote  
7 determined?

8 A. By their office placement.

9 Q. What does that mean?

10 A. That means -- I'm going to have a hard time  
11 not using my hands -- meaning that if you start at one  
12 office, you normally pass it to the office next to you,  
13 and then the office next to you, and the office next to  
14 you; except for there are some occasions when you skip;  
15 such as if someone is team three that week, meaning  
16 that they're in the office doing file reviews, so when  
17 you come back from hearings, if team three is No. 2,  
18 you skip that person. I don't know why.

19 And then every January and July, they  
20 reverse the order, so it goes the other way down the  
21 hallway.

22 Q. Would you be willing to draw it for me?

23 A. Yes.

24 Q. Would you be willing to draw me a map of  
25 the office placement and who sits where?

1           **A. I'm going to think how long I've been in**  
2           **that hallway and if I know where they're sitting.**

3           **(The witness complied.)**

4           MS. BREIHAN: I'll mark this as Exhibit 12.

5           (Deposition Exhibit No. 12 was marked for  
6           identification.)

7           BY MS. BREIHAN:

8           Q. Okay. So hypothetically, based on this,  
9           let's say Ms. Zamkus conducts a hearing, and it's a  
10          majority board vote. Then depending on whether it goes  
11          clockwise or counterclockwise, it depends on if it goes  
12          to Fitzwater and Jones and so on?

13          **A. Correct. But it would not go to the chair**  
14          **unless there is a tie.**

15          Q. Okay. So the chair does not vote, even if  
16          it's a majority decision, unless there's a tie?

17                  What if the charges the one that conducted  
18          the hearing?

19          **A. Then he passes in whatever direction that**  
20          **they're going. He would still vote.**

21          Q. So the chair only votes if he conducted the  
22          hearing, or if there's a tie amongst the rest of the  
23          board members, correct?

24          **A. Correct.**

25          Q. But, I guess -- okay. Since there's a



1 vacancy right now there probably wouldn't be a tie  
2 situation?

3 A. He would vote on cases if we needed to  
4 finalize a decision.

5 You know, oftentimes, it might not follow  
6 the path, because whatever date might be chosen is  
7 coming upon us very quickly, say, within 30 to 60 days.  
8 And in that case, you know, the members generally are  
9 aware, and they'll walk it to whoever's there to get it  
10 finalized as fast as they can.

11 Q. Do you know how it's determined who gets to  
12 sit where? Like, the offices, how decisions are being  
13 made?

14 A. I guess it's just seniority, probably.  
15 I mean, I didn't ever have the -- all we had is  
16 vacancies and stable when I was the board operations  
17 director.

18 I mean, I guess when Paul came, he got to  
19 choose whether he wanted this office, or this office.  
20 And then Gary was in this office. And when there was a  
21 vacancy, he moved to this office.

22 Q. Aside from passing the physical file, are  
23 there any, like, in person, or over-the-phone  
24 deliberations between board members, or the panel and  
25 board members, about a decision, whether to grant

1 parole?

2           **A.**    I believe they talk to one another and talk  
3 about the hearing.

4                   They try to make notes on the board action  
5 sheets so the next person voting has a good idea of the  
6 impressions that the hearing panel had.

7                   In some instances, the board member may  
8 choose to hold the file back, and bring it to what's  
9 called executive board, which takes place after the  
10 agenda of the board meeting. And it's only board  
11 members, and no other staff, and they'll kind of stack  
12 cases, and talk about them and vote afterwards.

13           Q.    Okay. And this board action sheet we've  
14 marked today as Exhibit 11, so the notes that you're  
15 referring to that the panel might make that would help  
16 guide other board members' votes, that's this little  
17 box on the first page that says: Hearing panel  
18 comment?

19           **A.**    Yes.

20           Q.    Is the hearing panel, are they required to  
21 review the parole file prior to the hearing?

22           **A.**    No.

23           Q.    Do they generally?

24           **A.**    No.

25           Q.    Are the board members who vote required to

1 review the parole file at any time?

2 A. What do you mean?

3 Q. So --

4 A. When they're making a decision, and they  
5 pass that file, they should review the parole file, as  
6 well as the report in front of them.

7 Q. Do they generally review the whole parole  
8 file?

9 A. I don't know.

10 Q. You worked pretty closely with Mr. McSwain  
11 for many years?

12 A. Yes.

13 Q. Do you know what his practice was, whether  
14 he reviewed the full parole file before voting?

15 A. I believe he did.

16 Q. And then how is a decision conveyed to an  
17 inmate?

18 How are they told they're being released or  
19 not?

20 A. After the offender notice is prepared, it's  
21 electronically sent to the institutional parole office.  
22 Printed out. And then it should be personally  
23 delivered by an institutional parole officer, if safety  
24 permits, and discussed with them.

25 Q. And the same sort of notice form is used in

1 all instances; is that correct?

2 **A. It's electronic. It's**  
3 **electronic-generated, once the decision's entered in**  
4 **our offender database.**

5 Q. So, yes?

6 **A. Yes.**

7 Q. Does an inmate have a right to appeal the  
8 board's decision?

9 **A. In some cases.**

10 Q. And what cases do they have a right to  
11 appeal?

12 **A. They have a right to appeal the hearing**  
13 **panel decisions to deny parole.**

14 Q. Any other circumstance that they have a  
15 right to appeal?

16 **A. Not that I can remember. They can't appeal**  
17 **majority board decisions.**

18 Q. And you said that the salient factor score  
19 is used for every inmate who's up for parole review,  
20 correct?

21 **A. Yes.**

22 Q. So now that we've talked about the general  
23 sort of parole review process, I'd like to ask you  
24 about the parole review process for hearings under  
25 Senate Bill 590.

1                   You understand I'm referring to the parole  
2   hearings conducted pursuant to the change in the law?

3                   **A.    Yes.**

4                   Q.    So can you walk me through what the process  
5   is, similarly, from start to finish, for handling a  
6   parole review under the new implementation of  
7   Senate Bill 590?

8                   **A.    I couldn't tell you the process right now  
9   because I'm not involved in the process right now.**

10                  Q.    You were involved in implementing the  
11   process?

12                  **A.    Yes.**

13                  Q.    And in analyzing the bill, correct?

14                  **A.    Yes.**

15                  Q.    So is it just that you don't remember? Or  
16   do you think it's changed since you left?

17                  **A.    I've never personally been involved in one  
18   of the hearings.**

19                  Q.    Okay. So are there any guidelines or  
20   procedures, or, like, worksheets that are supposed to  
21   help guide individuals --

22                  **A.    Yes.**

23                  Q.    -- through the process?

24                  **A.    Yes.**

25                  Q.    So even though you have not participated

1 personally in a hearing, do you have a general  
2 understanding of what the process is for inmates being  
3 funneled through this parole review process?

4 A. Yes.

5 Q. Can you describe that for me?

6 A. The offender sends in a petition to our  
7 Central Office, and then the petition is reviewed by  
8 the lead parole analyst, who makes sure that they  
9 qualify.

10 If they qualify, the hearing is scheduled,  
11 and victims services is notified so they can begin  
12 finding the victim. Because many of these people were  
13 not registered. The hearing is usually scheduled  
14 within 90 days.

15 And then the IPO delivers the notice.  
16 Conducts the prehearing interview. The hearing's held.

17 The IPO is expected to use the additional  
18 questions in that prehearing worksheet.

19 The analysts group created kind of a  
20 trailer to the board action sheet, to document those  
21 additional elements, whether they found them, didn't  
22 find them, or not, during the hearing.

23 I don't believe that it is -- other than  
24 the additional elements -- that it's substantially  
25 different from any other parole consideration hearing.

1           Q.    And you had talked about how the JL WOP  
2    wasn't an issue until Senate Bill 590 was passed, which  
3    implemented parole review for a certain subsection of  
4    juvenile life without parole inmates, correct?

5           **A.    Yes.**

6                   **(Deposition Exhibit No. 13 was marked for**  
7    **identification.)**

8    BY MS. BREIHAN:

9           Q.    I'm going to hand you what I've marked as  
10   Exhibit 13.

11                   This Bates-stamped AG01324.

12                   Do you recognize this email?

13           **A.    Yes.**

14           Q.    And, again, this looks like an email chain.  
15   The first part of the chain is an email from  
16   Kimberly Evans to Ellis McSwain on March 23rd, 2016,  
17   correct?

18           **A.    Yes.**

19           Q.    Who's Kimberly Evans?

20           **A.    The victims services coordinator.**

21           Q.    And the subject is juvenile life without.  
22   She's asks:  What is the status on these cases?  Have  
23   we started setting up parole hearings?

24                   And Mr. McSwain forwards -- responds and  
25   copies you, correct?

1           **A.     Yes.**

2           Q.     And says that Kim should get with you on  
3     this as she is looking into same.

4                     What did he mean by that?

5           **A.     I believe that Kim had been in contact with**  
6     **the Attorney General's Office, and believed, based upon**  
7     **maybe some court action, that we were going to start**  
8     **hearing these cases that we'd been ordered to, when, in**  
9     **fact, that wasn't the case. That's what I believe her**  
10    **intention was.**

11          Q.     So Mr. McSwain correct when he said you  
12    were already looking into this issue of parole hearings  
13    for juveniles live without?

14          **A.     I don't know what he would have meant by**  
15    **looking into. Other than we were aware it was an issue**  
16    **in courts and in pending legislation.**

17          Q.     Were you aware of an order of the Missouri  
18    Supreme Court in March of 2016 in any juvenile life  
19    without parole cases?

20          **A.     No.**

21          Q.     Were you, in fact, working on designing or  
22    implementing a process for parole review for this  
23    population of inmates in March of 2016?

24          **A.     Not that I remember. Not that early.**

25          Q.     When did you start?



1 Do you remember the month?

2 A. I thought it was April or May.

3 Q. So that would have been before the bill was  
4 signed into law; is that correct?

5 A. I don't know if we would have worked on the  
6 process.

7 I think in responding to legislation and  
8 talking with our legislative liaison about how this  
9 might go, you know, we wanted to be ready to implement  
10 as soon as the legislation was in effect.

11 Q. Do you know how inmates were informed about  
12 the passage of SB 590 and what it might mean for them?

13 A. There may have been a memo sent to wardens,  
14 or communication drafted through the institutional  
15 regional administrator, to them.

16 Q. Were you involved in that process at all?

17 A. Notification to the offenders? No.

18 Q. Were you involved at all in preparing the  
19 form memo that would go to wardens to notify inmates  
20 about this process?

21 A. No. Other than maybe it being shared with  
22 me, but I did not write it.

23 Q. Do you know who did write it?

24 A. I think it was Michelle Kasak.

25 Q. Did you ever prepare a memo that sort of

1 summarized the juvenile life without parole panel  
2 review process that you recall?

3 **A. I drafted one on behalf of Chairman McSwain**  
4 **that he eventually sent out.**

5 Q. And do you know if that was ever shared  
6 with inmates?

7 **A. I don't know.**

8 Q. Did you ever express any concerns about it  
9 being shared with inmates? As it might give the  
10 appearance of fishing for parole?

11 **A. I don't know.**

12 **(Deposition Exhibit No. 14 was marked for**  
13 **identification.)**

14 BY MS. BREIHAN:

15 Q. I'll show you what I've marked as  
16 Exhibit 14. This is Bates-stamped AG01444 and 1445.

17 Do you recognize this document?

18 **A. Yes.**

19 Q. And what is it?

20 **A. A forwarded email trail.**

21 Q. Okay. And it looks like the subject line  
22 is juvenile life without parole process?

23 **A. Mm-hmm.**

24 Q. And Mr. Cassidy; who's that?

25 **A. Jay Cassidy was a warden.**

1 Q. Do you know --

2 A. I think he was asking -- now I recall the  
3 gist of this conversation. And was he was asking how  
4 were the offenders going to be notified. And then the  
5 chairman asked me. And I said I don't want them to  
6 distribute the memo, because it appears, to me, that we  
7 would be giving legal advice to an inmate. And that's  
8 not the job of the parole board.

9 Q. But your email doesn't say anything about a  
10 concern about giving legal advice, does it?

11 A. No.

12 Q. It talks about a concern about having an  
13 appearance of fishing for parole, right?

14 A. Yes.

15 Q. Why would that be a problem?

16 A. Well, the board doesn't go looking for  
17 people to parole, so to speak. They conduct  
18 consideration hearings when people are eligible.

19 And in this instance, it's not the board's  
20 job to automatically schedule a hearing now that  
21 they've become eligible. It's the offenders'  
22 obligation to file a petition if they choose to be  
23 considered.

24 Q. And in all other instances, the general  
25 process we talked about, the board does generally

1 schedule them?

2           **A. Yes. And most others. Other than for**  
 3           **conditional release extensions, there is a process**  
 4           **whereby offenders can petition the board for**  
 5           **reconsideration.**

6                   **(Deposition Exhibit No. 15 was marked for**  
 7           **identification.)**

8 BY MS. BREIHAN:

9           Q. We talked earlier about revisions to the  
 10 administrative rules or the regulations.

11                   I'm going to hand you what I've marked as  
 12 Exhibit 15. It's Bates-stamped 1456 through 1467.

13                   Do you recognize the first page of this?  
 14 Looks like an email from you.

15           **A. Mm-hmm.**

16           Q. And it's regarding proposed rule changes,  
 17 as well as the Blue Book, which is incorporated in the  
 18 rule, correct?

19           **A. Right.**

20           Q. Are there any changes to the regulations  
 21 here -- not the Blue Book, but the regulations -- that  
 22 reflect the passage of Senate Bill 590?

23           **A. Not in the state regs itself that I'm**  
 24           **finding.**

25                   **(Deposition Exhibit No. 16 was marked for**

1     **identification.)**

2     BY MS. BREIHAN:

3             Q.     I'll show you Exhibit 16.

4                     It was attached as an exhibit in the  
5     complaint in this case.

6                     Have you looked at the complaint that was  
7     filed in this case?

8             **A.     No.   I mean, not in its entirety.**

9             Q.     Did you look at parts of it?

10            **A.     Parts of it.**

11            Q.     When?

12            **A.     Probably when it was posted on your**  
13     **website.**

14            Q.     Okay.

15            **A.     On the MacArthur Foundation website.**

16            Q.     And I didn't realize you frequent our  
17     website.   Do you keep up to date?

18            **A.     I don't frequent it.**

19            Q.     So you read about the -- you read the part  
20     of the complaint when it was posted on our website,  
21     correct?

22            **A.     Yes.**

23            Q.     Do you remember when it was?

24            **A.     No.**

25            Q.     Do you remember what prompted you to go to

1 our website to look at it?

2 **A. An article in the Post-Dispatch.**

3 Q. Aside from that instance, have you looked  
4 or read the complaint on any other occasion?

5 **A. Not that I can remember.**

6 Q. Getting back to this Exhibit '16, have you  
7 seen this before today?

8 **A. No.**

9 Q. As of April 27th, 2017, were you still the  
10 board operations director?

11 **A. As of April? I don't recall the exact**  
12 **date. I don't believe I was at that time.**

13 Q. Well, you'll see that the second through  
14 fourteen pages of this exhibit are purported parole  
15 hearing procedures that were forwarded to our office by  
16 Director Anne Precythe.

17 Have you ever seen these parole hearing  
18 procedures before?

19 **A. No.**

20 Q. And you can take the time to look through  
21 them. It might be necessary to answer my next  
22 question, and whether these procedure are consistent  
23 with the administrative rules, Blue Book, and any other  
24 authority that governs the parole hearing process.

25 **A. In general, yes. I don't know where this**

1     came from. To me, it almost looks like something by  
2     victims services, who don't dictate what happens in our  
3     hearings.

4                     I couldn't tell you.

5             Q.     Why does it look to you something developed  
6     by victims services?

7             A.     Because it looks, to me, that it's giving  
8     some instruction about how they should conduct  
9     themselves during a hearing.

10            Q.     How victims should conduct themselves?

11            A.     Or delegates.

12            Q.     And it's telling -- it's telling my office,  
13     and my colleague, Mae Quinn, that we're not allowed to  
14     take notes during the hearing, correct?

15                    That very first bullet point on the first  
16     page of the attachment?

17            A.     Yes.

18            Q.     And tells us a number of other things, but  
19     also there's to be no contact made directly or  
20     indirectly with the victims except through the office  
21     of victims services, correct?

22            A.     Yes.

23            Q.     Is there a policy, procedure, or rule,  
24     regulation, that you can point to that says that  
25     inmates, delegates, or their attorneys are not allowed

1 to have any contact with victims?

2 **A. I don't know where that would be in**  
3 **writing.**

4 Q. Other than this letter from the director to  
5 our office?

6 **A. No.**

7 Q. So we talked about how, unlike in most  
8 general circumstances where hearings are automatically  
9 set based on a calculation of eligibility, in the  
10 juvenile life without parole context the inmate has to  
11 petition for a hearing, correct?

12 **A. Correct.**

13 Q. When are they eligible to petition for a  
14 hearing?

15 **A. After they've served 25 years of the**  
16 **sentence that is life without.**

17 Q. Sounds like that's an important distinction  
18 to you. Not just 25 years on the sentence of life  
19 without?

20 **A. Yes.**

21 Q. What's the distinction you're making there?

22 **A. I believe that's what it says in the**  
23 **statute.**

24 Q. And the lead parole analyst determines  
25 eligibility, correct?



1           **A.    Yes.**

2           Q.    And that's Steven Mueller?

3           **A.    Yes.**

4           Q.    Has the board ever held a Senate Bill 590  
5 hearing for someone that was not eligible for parole?

6           **A.    I don't know.**

7           Q.    Do you know who Walter Eden is?

8           **A.    No.**

9                   **(Deposition Exhibit No. 17 was marked for**  
10 **identification.)**

11 BY MR. BREIHAN:

12           Q.    I will show you what I've marked as  
13 Exhibit 17.

14                   It's Bates-stamped AG01590.

15                   Do you recognize this email?

16           **A.    Yes.**

17           Q.    Does this refresh your memory about an  
18 inmate named [REDACTED]?

19           **A.    Not really.**

20           Q.    I know it's been some time.

21           **A.    I think this is one where we ended up**  
22 **trying to seek official documentation of his correct**  
23 **date of birth.**

24           Q.    It looks like Charlie Baker is reaching out  
25 to you in January of 2017, after having conducted a

1 parole hearing for Mr. [REDACTED] on January 3rd, 2017,  
2 correct?

3 **A. Uh-huh.**

4 Q. And that there was some question whether he  
5 was 17 or 18 at the time of the underlying offense,  
6 correct?

7 **A. Yes.**

8 Q. Did the board ever determine when his  
9 actual date of birth was?

10 **A. I don't know if they did or didn't.**

11 Q. But they hadn't determined it before his  
12 hearing, that much is clear, correct?

13 **A. What they relied on was the adult face  
14 sheet prepared by Institutions.**

15 Q. And the face sheet had two unverified dates  
16 of birth?

17 **A. Yes.**

18 Q. So there was an error on the face sheet  
19 that the board relied upon, correct?

20 **A. Yes.**

21 Q. And why was Mr. Baker asking you for this  
22 information?

23 **A. I believe that he was requesting sort of  
24 permission to withhold the decision pending  
25 verification of a true birth date, just as his**

1       **supervisor.**

2               Q.     Would you have personally been the one to  
3     confirm the date of birth?

4               A.     No.

5               Q.     What would you have done to confirm that?

6               A.     I would have relied on, probably, our  
7     institutional records staff to seek some independent  
8     verification of which was the correct date of birth,  
9     either through Vital Records. I don't know how they do  
10    that in the institution.

11              Q.     And then he closes, it says, "The panel is  
12    requesting assistance in verifying the date of birth."

13                     And it looks like the other individuals on  
14    the email are Martin Rucker, who's a board member,  
15    correct?

16              A.     Yes.

17              Q.     And Kimberly Evans, victims services; does  
18    Ms. Evans serve on hearing panels?

19              A.     No.

20              Q.     Do you have any idea why she would be  
21    copied on this email that's on behalf of the hearing  
22    panel seeking clarification?

23              A.     No. I can assume that they represented  
24    victims at that particular hearing.

25              Q.     Do you know if she's participated in every

1 Senate Bill 590 hearing?

2 A. No.

3 (A break was taken.)

4 MS. BREIHAN: Back on the record.

5 (Deposition Exhibit No. 18 was marked for  
6 identification.)

7 BY MS. BREIHAN:

8 Q. I'll hand you another document.  
9 Exhibit 18.

10 This document is Bates-stamped AG01409  
11 through 1412.

12 Go ahead and take your time to review it.  
13 Let me know if you recognize this.

14 A. (The witness complied.

15 Yes.

16 Q. And what is it?

17 A. It's a memo I drafted with the chairman,  
18 and on behalf of the chairman, to describe the process  
19 for how we would schedule juveniles without who  
20 petitioned the board for parole consideration.

21 Q. And it looks like a sample petition for  
22 parole consideration?

23 A. Yeah.

24 Q. Did you draft that petition as well?

25 A. Steve and I together did. I'm not sure who

1       **actually did the typing.**

2               Q.     And you mean Steve Mueller?

3               **A.     Yes.**

4               Q.     And was this process that's outlined in  
5 your memo approved by the director?

6               **A.     Yes.**

7               Q.     And you called it your OA moment ago?

8               **A.     I wrote it.**

9               Q.     It seems Mr. McSwain relies on you for  
10 drafting memorandum like this even if it was on his  
11 behalf; is that fair to say?

12              **A.     For some things.**

13              Q.     So on July 29th, 2016, you send this memo  
14 to Mr. McSwain, final draft of the memo, along with the  
15 draft petition.

16                     And you already mentioned he signs off on  
17 it, correct? Approves the process that you suggested,  
18 correct?

19              **A.     Yes.**

20              Q.     And then a final draft of that same memo is  
21 distributed to the board members, and wardens, and  
22 institutional parole supervisors, correct?

23              **A.     Yes.**

24              Q.     I'll hand you that as well. It's been  
25 marked as Exhibit 19.

1                   (Deposition Exhibit No. 19 was marked for  
2     identification.)

3                   And it's Bates-stamped AG0022 through 24.

4                   And this, just as you described, outlines  
5     the process for petitioning the parole board for review  
6     of sentences under Senate Bill 590, correct?

7                   **A.     Yes.**

8                   Q.     And this is the same memo that you prepared  
9     and sent to Mr. McSwain for approval?

10                  **A.     Yes.**

11                  Q.     And then it says that, "Until such time as  
12     procedure in the Code of State Regulations are revised,  
13     this memorandum should serve as guidance on this  
14     process," correct?

15                  **A.     Yes.**

16                  Q.     And we already talked about earlier the  
17     state regulation revisions that you and others did in  
18     August of 2016, that they did not address the Senate  
19     Bill 590 hearings, correct?

20                  **A.     The Blue Book did.**

21                  Q.     The Blue Book did in that one paragraph,  
22     correct?

23                  **A.     Yes.**

24                  Q.     But the regulations didn't?

25                  **A.     No.**

1           Q.    The Blue Book is really meant for inmates,  
2   not for analysts or IPOs, correct?

3           A.    Yes.

4           Q.    And you mentioned that hearings in this  
5   memo that we've marked as Exhibit 19, that hearings  
6   will be scheduled within 90 days of processing the  
7   petition, in part to allow a thorough investigation to  
8   be completed, correct?

9           A.    Yes.

10          Q.    What do you mean there by "a thorough  
11   investigation?"

12          A.    Well, we weren't sure, as I described  
13   earlier, if we would have any file material related to  
14   circumstances of the offense.

15               And so not knowing if we were going to have  
16   to send field Probation and Parole staff to  
17   prosecutor's offices to go dig through boxes to find  
18   materials for people who we never knew we were going to  
19   have to consider for parole, we wanted to allow time  
20   for that to occur, if we needed to send a request to  
21   the field to find information.

22          Q.    And in the past, you had shared a concern  
23   with the board and with Jeff Earl about the ability to  
24   be able to get those materials in order to conduct this  
25   review, correct?

1           **A.    Yes.**

2           Q.    And you also shared those concerns with  
3 Jay Boresi and DOC legal, correct?

4           **A.    Yes.**

5                   **(Deposition Exhibit No. 20 was marked for**  
6 **identification.)**

7 BY MS. BREIHAN:

8           Q.    I'll hand you Exhibit 20.

9                   This is AG01309 through 1310.

10                  Do you recognize this document, ma'am?

11           **A.    Yes.**

12           Q.    This is an email chain including an email  
13 you sent to Jay Boresi on July 18th, 2016?

14           **A.    Yes.**

15           Q.    And it seems to sort of parallel the memo  
16 that we've marked as Exhibit 19, which talks about the  
17 suggested process for handling juvenile life without  
18 parole?

19           **A.    Yes.**

20           Q.    It talks about the need to conduct a  
21 thorough investigation. And the concern that the  
22 agency will have no prior file materials. And that  
23 given the age of the offenses, the materials may be  
24 difficult to obtain, correct?

25           **A.    Yes.**



1           Q.    You also indicate that the board will be  
2 unlikely to consider parole if unable to ascertain  
3 progress and growth since the occurrence of the crime.

4                   What do you mean by that?

5                   And where I'm looking is the last full  
6 paragraph on this first page.

7           A.    Well, if there were -- if there's no file  
8 material to describe the circumstances of the offense,  
9 or you don't have, you know, an arrest report, or  
10 thorough investigative reports, I believe it would be  
11 difficult for a board to determine, just through  
12 question and answer, how the offender came to be led  
13 into committing the crime. Such as, you know, was he  
14 the ring leader or the follower?

15                   I mean, the subsequent growth throughout  
16 would be measured by program participation, and things  
17 like attitude, that you would gain more through  
18 interview and some assessment.

19           Q.    And you mentioned under certain  
20 circumstances, if an inmate had a certain mental health  
21 score, there might be a summary from mental health  
22 records?

23           A.    Yes.

24           Q.    Is there any sort of summary for mental  
25 health, or a psychology eval provided by mental health

1 providers in the Department of Corrections, about the  
2 inmate's progress and growth since they were first  
3 incarcerated?

4           **A. I don't know if there is or not. The**  
5 **institution that I worked at did not have offenders who**  
6 **had significant mental health histories.**

7           Q. The implication of this sentence seems to  
8 be that growth and progress over time are significant  
9 factors to be considered by the board in these cases;  
10 is that correct?

11           **A. Yes. They would be in any case.**

12           Q. So no different in this case than the  
13 others is what you're saying?

14           **A. Right. You want to see progress toward the**  
15 **positive reduction of conduct violations, improvement**  
16 **of the behavior as they approach release.**

17           Q. And then the last sentence on this first  
18 page, which continues on to the second, could you read  
19 that aloud for me?

20           **A. "If release is denied, the board will**  
21 **likely cite poor institutional adjustment, or the**  
22 **determination that it is unlikely the offender be able**  
23 **to remain at liberty without violating the law, as**  
24 **opposed to seriousness or circumstances surrounding the**  
25 **present offense."**

1 Q. Why is what?

2 A. Why is what? Ultimately, it was not true.

3 Q. What do you mean?

4 A. I mean, in my discussions with legal  
5 counsel, we had initially discussed not using  
6 circumstances or seriousness of the offense, which  
7 parallel what we did with the domestic violence  
8 females. That's not the course that the board opted to  
9 go.

10 Q. Yeah. And why did they decide not to go  
11 that direction?

12 A. I don't know.

13 Q. You weren't part of those discussions?

14 A. I was part of the discussion with the  
15 analysts group only, who didn't believe that we should  
16 cite different reasons for different groups of  
17 offenders; that we ought to be consistent; and if we  
18 really were denying based upon the seriousness, the  
19 record should reflect that.

20 Q. Fair to say that it was your opinion, at  
21 least as of July 18th, 2016, that for this specific  
22 population of inmates, circumstances of the offense  
23 should not be the deciding factor?

24 A. Not the deciding.

25 Q. But it was your opinion that they should

1 not be denied on circumstances of the offense?

2 **A. Correct.**

3 Q. Did the parole analysts with whom you  
4 discussed that position agree with you?

5 **A. No.**

6 Q. Did they all disagree with you?

7 **A. For the most part.**

8 Q. Because they didn't feel you should use  
9 different reasons for different inmates, correct?

10 **A. Correct.**

11 Q. And at some point the decision was made to  
12 treat them the same as other inmates with respect to  
13 the basis for denial, correct?

14 **A. I don't know that it was a decision, so  
15 much as it was, if they didn't agree, and agree that we  
16 ought to treat them the same, then we're not doing  
17 anything differently.**

18 Q. I'm sorry, could you explain that to me?

19 **A. Because the analysts didn't agree with me,  
20 it didn't become a new issue.**

21 Q. Okay.

22 **A. And whether they had individual discussions  
23 with the board, as they were conducting hearings and  
24 marking reasons for denial of parole or not, I don't  
25 know.**

1           **I don't remember ever talking about it at a**  
2 **board hearing. Or a board meeting.**

3           Q. Do you know whether the board had any  
4 deliberation or discussion about whether to sort of  
5 adopt your perspective about not using circumstances of  
6 the offense as a basis for denial?

7           **A. I don't remember any discussions. I just**  
8 **remember it as the analysts meeting.**

9           Q. What analysts meeting, do you remember,  
10 that it was discussed?

11          **A. Likely would have been in August.**

12          Q. At the end of your August 1st memo,  
13 Exhibit 19, you indicate that any questions about this  
14 JL WOP hearing process can be made directly to you?

15          **A. Yes.**

16          Q. Did you receive any questions from parole  
17 staff about the JL WOP parole hearing process?

18          **A. Not really. I mean, other than discourse**  
19 **about the hearing report, and is this appropriate to**  
20 **put in, is this not. The development of the trailer to**  
21 **the board action sheet to document additional factors.**

22               **I mean, I don't recall anything specific.**

23          Q. You just mentioned, perhaps, that there  
24 were discussions about what might be appropriate to put  
25 in a prehearing report; did I hear you correctly?

1           **A.    Yes.**

2           Q.    So did you have conversations with  
3   institutional parole officers or their supervisors  
4   about what to information to include in prehearing  
5   reports for JL WOPers?

6           **A.    No.   Just what the institutional regional**  
7   **administrator as part of our discussions in developing**  
8   **the process.**

9           Q.    Understood.   So not with respect to  
10   specific inmates?

11          **A.    No.   No.**

12          Q.    Okay.   Thank you.

13                I'm going to hand you what I've marked as  
14   Exhibit 21.

15                (Deposition Exhibit No. 21 was marked for  
16   identification.)

17   BY MS. BREIHAN:

18          Q.    This is Bates-stamped AGO 1479 and 1480.

19                Do you recognize this email chain?

20          **A.    Yes.**

21          Q.    And it looks like David Owen emailed you  
22   and Mr. McSwain, Ms. Kempker, and Ms. McClure on  
23   August 24, 2016, regarding Senate Bill 590, correct?

24          **A.    Yes.**

25          Q.    Who's David Owen?

1           **A.     Public information officer.**

2           Q.     And why was he sending you these questions  
3     and proposed response?

4           **A.     Well, I imagine because he got a request.**

5           Q.     And you respond with one revision, correct?

6           **A.     Yes.**

7           Q.     What's the change that you recommended be  
8     made to his proposed response?

9           **A.     To clarify that it was our intention to**  
10    **implement and to allow offenders to be heard after**  
11    **they've served 25 years of the specific sentence that**  
12    **was juvenile life without, not just 25 years of**  
13    **incarceration.**

14          Q.     And why is that an important distinction,  
15    as you say here in your email, back to Mr. Owen?

16          **A.     That's how we interpreted the statute.**

17          Q.     But what difference would it make, I  
18    suppose?

19          **A.     Well, if you haven't started serving the**  
20    **sentence, then you haven't started serving the**  
21    **sentence.**

22          Q.     So if an inmate had another sentence that  
23    ran consecutively that preceded the life without, and  
24    that hasn't run yet, they might not be eligible after  
25    having 25 years?

1           **A.     Correct. That's how we interpreted it.**

2           Q.     And if an inmate had two active life  
3 without parole sentences, and they were impacted by  
4 Senate Bill 590, would they be required to serve  
5 50 years then before they were eligible?

6           **A.     I don't remember that exactly. I believe**  
7 **we would hear them on the first, but deny release**  
8 **because they hadn't met the eligibility on the second.**

9           Q.     And in your opinion that would comply with  
10 Miller versus Alabama?

11          **A.     It would comply with the Missouri law.**

12          Q.     That doesn't answer my question.

13          **A.     I don't know. I'm not a lawyer. I was**  
14 **following the statute as written for Missouri.**

15          Q.     I understand you're not a lawyer, but you  
16 were responsible, at least in part, for analyzing,  
17 interpreting and implementing Senate Bill 590, correct?

18          **A.     Correct.**

19          Q.     Did you field any questions from inmates  
20 about the hearing process under SB 590?

21          **A.     I don't remember.**

22          Q.     Do you recall fielding any questions from  
23 attorneys about the hearing process?

24          **A.     Yes.**

25          Q.     Who do you recall fielding questions from?



1           **A.    I would have no idea of their names.**

2           Q.    How many different attorneys did you speak  
3 with who had questions about the hearing process?

4           **A.    Probably at least four.**

5           Q.    Do you recall if there were any men you  
6 spoke with, male attorneys you spoke with, about the  
7 hearing process?

8           **A.    Yes.**

9           Q.    Did you speak with Kent Gibson about the  
10 hearing process?

11          **A.    Possibly.**

12          Q.    Jim Woersch?

13          **A.    Not familiar with that name.**

14          Q.    I'll hand you Exhibit 22.  It's  
15 Bates-stamped AGO1162.

16                   (Deposition Exhibit No. 22 was marked for  
17 identification.)

18 BY MS. BREIHAN:

19          Q.    Do you recognize this email?

20          **A.    Yes.**

21          Q.    Looks like an email from you to Mr. Owen  
22 again dated October 21st, 2016, correct?

23          **A.    Yes.**

24          Q.    Can you tell me what this email is about?

25          **A.    It was about conversations that I had had**

1 with Mae Quinn about the hearing process.

2 She was very, very demanding, and very  
3 argumentative with me about the process, and how it did  
4 not seem to meet the Miller ruling.

5 And I believe she had also been in contact  
6 with our PIO, or with the media about our process, and  
7 so I was giving him a heads up in case it was something  
8 he needed to defend.

9 Q. And you say: Just letting you know in case  
10 I'm quoted in the Post-Dispatch, correct?

11 A. Exactly.

12 Q. Did you have concerns about that?

13 A. Yes, I did.

14 Q. And what was that based on?

15 A. It was based on Ms. Quinn becoming  
16 increasingly argumentative and very hostile when we  
17 were trying to be very open and answer her questions  
18 about the process.

19 Q. What did she do that was hostile?

20 A. In -- I can recall phone conversations  
21 where she was just very disparaging to me, in my  
22 opinion. And I felt threatened by her. Not in a  
23 physical sense, or in a fear sense, but she was very  
24 intimidating.

25 Q. You felt threatened because she disagreed

1 with your interpretation of what the process was going  
2 to be? Or should be?

3 **A. Yes.**

4 Q. This is a true and accurate copy of the  
5 email that you sent to Mr. Owen on October 24th, 2016,  
6 correct?

7 **A. I believe so.**

8 Q. Do you recall any conversations with  
9 Mae Quinn, other than the one that's described in this  
10 email?

11 **A. There were more than one phone  
12 conversations that we had.**

13 Q. How many phone conversations did you have  
14 with Ms. Quinn?

15 **A. I don't know the number.**

16 Q. Do you recall what was said by you during  
17 any of those phone conversations? Other than the one  
18 that is described in Exhibit 22?

19 **A. Not specifically.**

20 Q. Do you recall generally?

21 **A. Generally, it seemed to me, that we talked  
22 about the process. She would argue that they had more  
23 rights than -- than I did. I mean, we fundamentally  
24 did not agree.**

25 **You know, she was, I think, trying to**

1 convince me that they should have access to the full  
2 file. And that they should be able to cross-examine  
3 the board and the victim. And that was just not the  
4 board's process at the time.

5 (Deposition Exhibit No. 23 was marked for  
6 identification.)

7 BY MS. BREIHAN:

8 Q. We've talked in passing about this  
9 worksheet that is used during the prehearing  
10 interviews.

11 I'll show you Exhibit 23. It's AGO30  
12 through 41.

13 Is this the worksheet that you've been  
14 referring to that's used by IPOs during prehearing  
15 interviews with juvenile life offenders serving life  
16 without parole sentences?

17 A. I believe so.

18 Q. Is this used in every prehearing interview  
19 between an IPO and a juvenile offender eligible for  
20 parole review under 590?

21 A. I don't know the answer to that.

22 Q. Is it expected to be used?

23 A. It would be expected.

24 Q. And IPOs are instructed to use this during  
25 their prehearing interviews with JL WOPers, correct?

1           **A.     Yes.**

2           Q.     I think you mentioned that there, in this  
3 worksheet, specific questions that IPOs were scripted  
4 or instructed to ask of the inmate in order to gather  
5 information responsive to the specific elements in  
6 Senate Bill 590; is that correct?

7           **A.     I don't know about specific questions, but**  
8 **just general areas, or areas where they would look for**  
9 **the information.**

10          Q.     At the top it says, "Senate Bill 590 places  
11 specific areas of consideration for the parole board.  
12 Those considerations are highlighted and should be  
13 included in the report," correct?

14          **A.     Yes.**

15          Q.     And I know this is a black and white copy,  
16 but I think you can tell where the highlighted language  
17 appears, correct?

18          **A.     Yes.**

19          Q.     And who prepared this worksheet?

20          **A.     Michelle Kasak.**

21          Q.     Were you involved at all with drafting it?

22          **A.     No.**

23          Q.     Were you involved at all in approving it?

24          **A.     Not approval. I mean, other than, does**  
25 **this look okay? It's her staff. Not mine.**

1           Q.    The information that's garnered during the  
2   prehearing interview is used to prepare the prehearing  
3   report, correct?

4           **A.    Yes.**

5           Q.    And you testified earlier that prehearing  
6   report guides the hearing itself, correct?

7           **A.    Yes.**

8           Q.    And then the hearing, in theory, the  
9   information gathered there, and the report, form the  
10   basis for the board's decision ultimately, correct?

11          **A.    Yes.**

12          Q.    So this prehearing interview is a pretty  
13   critical stage in the game; is that fair to say?

14          **A.    Yes.**

15          Q.    Who then, if anyone, other than  
16   Michelle Kasak, reviewed and approved this juvenile  
17   life without PHR worksheet?

18          **A.    I don't know if the analysts looked at it,  
19   or gave her feedback, or not.**

20          Q.    Do you know if any board member reviewed  
21   and approved this worksheet?

22          **A.    No, I don't know that.**

23          Q.    Do you know if DOC legal approved this  
24   worksheet?

25          **A.    I don't know the answer to that.**

1           Q.    Within here it refers to board information  
2 requests.

3                   What's a board information request?

4           **A.   Where are you specifically at?**

5           Q.    Are you generally familiar with a board  
6 information request?

7           **A.   It's on page two, at the top, under present  
8 offense.**

9                   A board information request is an  
10 investigation request from either Central Office, or to  
11 a field office, to gather information on circumstances  
12 of the offense, prior record, or other information that  
13 may be held more locally by a prosecutor or a police  
14 department.

15          Q.    When a board information request is made is  
16 it made in writing?

17          **A.   It's made electronically through our  
18 offender database.**

19          Q.    Is a copy of that kept in the  
20 Central Office parole file?

21          **A.   No.   It's just in the electronic database.  
22 The reply would be.**

23          Q.    So the response to a board information  
24 request is kept in the parole file, correct?

25          **A.   Yes.**

1           Q.    And is the inmate allowed to see the  
2    response to the board information request?

3           **A.    No.**

4           Q.    It looks like to me -- and I can show you a  
5    copy of the bill -- but the highlighted language is  
6    copy and pasted from a portion of the statute; is that  
7    fair to say?

8           **A.    That's fair.**

9           Q.    And it's actually just the language from  
10   558.047. And I'll give you a copy of Senate Bill 590  
11   as Exhibit 24, so you're not having to operate from  
12   memory here.

13                    So it looks like the highlighted language  
14   that's in this worksheet is copy and pasted from  
15   558.047, correct?

16                    (Deposition Exhibit No. 24 was marked for  
17   identification.)

18                    THE WITNESS:   Yes.

19   BY MS. BREIHAN:

20           Q.    And doesn't contain any specific questions  
21   for the IPO to ask in order to gather this information,  
22   correct?

23           **A.    No.**

24           Q.    And there are certain portions of this  
25   worksheet where there are specific questions written



1 out. For example, in assessing aggressivity, or  
2 substance abuse issues, mental health issues, correct?

3 **A. Yes.**

4 Q. But there's no guidance beyond copying the  
5 statutory language here to IPOs about what questions to  
6 ask the inmate in order to assess these characteristics  
7 or these elements, correct?

8 **A. I see three.**

9 Q. These un-bolded questions?

10 **A. Yes.**

11 Q. And those are part of the standard  
12 worksheet, correct?

13 **A. I don't know if they are or they aren't.**

14 Q. Other than these three: Does the offender  
15 justify or make excuses for their actions? What level  
16 of victim empathy does the offender demonstrate? What  
17 is the third question?

18 **A. The motivation.**

19 Q. What's the motivation for committing the  
20 offense?

21 Other than those, there's no specific  
22 questions to guide the IPO in assessing statutory  
23 elements, correct?

24 **A. No.**

25 Q. And are the elements in 565.033 in this

1 worksheet?

2           **A. To some extent.**

3           Q. Can you show me where?

4           **A. I would think the nature and circumstances**  
5 **of the offense.**

6                   **Degree of culpability.**

7                   **Subdivision 4, the defendant's background,**  
8 **including his family home and community home**  
9 **environment.**

10                   **Six, the extent of the defendant's**  
11 **participation.**

12                   **Eight, prior criminal history.**

13           Q. Does the worksheet talk at all about, or  
14 ask the IPO to gather information about the affective  
15 characteristics attributable to the inmate's youth on  
16 his or her judgment?

17           **A. No.**

18           Q. Does it talk at all about the weight that  
19 should be assigned to any of the elements?

20           **A. No.**

21           Q. And this worksheet's not mentioned at all  
22 in the procedure number P6-4.1, which we previously  
23 marked as Exhibit 10, is it?

24           **A. No.**

25           Q. And as you testified to, earlier today,

1     these worksheets, once completed, are not typically  
2     kept? They might be shredded at this point, correct?

3             **A.     Correct.**

4             Q.     Were institutional parole officers provided  
5     any training on this modified worksheet?

6             **A.     I don't know.**

7             Q.     Who would know the answer to that question?

8             **A.     Michelle Kasak.**

9             Q.     Does anybody other than the victims  
10    services office have contact with victims or victim's  
11    representatives prior to hearings?

12            **A.     Are you asking from our department?**

13            Q.     Anyone within the Division of Probation and  
14    Parole?

15            **A.     Contact with victims is made at other  
16    points, but not during the parole consideration  
17    process. Unless the victim elects to not attend the  
18    hearing, and wishes to phone the board, or have a  
19    meeting with the board in advance.**

20            Q.     To your knowledge, has that happened in any  
21    of these juvenile life without parole cases?

22            **A.     I don't know.**

23            Q.     Have you had any contact directly with  
24    victims, or victim's representatives, in the context of  
25    these juvenile life without parole hearings?

1           **A.    Not that I can remember. Unless it might**  
2           **have been an advocate from a prosecutor's office.**

3                   MS. BREIHAN: I'm going to show her a  
4           highly confidential document.

5           Q.    Are you aware there's a protective order in  
6           this case.

7           **A.    I don't even know what you're talking**  
8           **about.**

9                   MR. CRANE: Let's take a break.

10                   (A break was taken.)

11                   (Deposition Exhibit No. 25 was marked for  
12           identification.)

13                   MS. BREIHAN: During the break, counsel  
14           showed Ms. Dills a copy of the protective order in this  
15           case, and she has signed an acknowledgment and  
16           agreement to be bound.

17                   I will just state for the record that we  
18           are still reviewing the designations in the more recent  
19           November 13th and 16th productions by the defendants in  
20           this case, and we'll be challenging some of the  
21           designations. And treating them as highly  
22           confidential, or confidential as designated today, is  
23           not intended to be a waiver to any future challenge  
24           regarding the designation of those documents.

25           BY MS. BREIHAN:

1 I will show you what I've marked as  
2 Exhibit 25. This is Bates-stamped AGO03205 through  
3 3209.

4 [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
8 [REDACTED]  
9 [REDACTED] [REDACTED].  
10 [REDACTED] [REDACTED] ?  
11 [REDACTED] [REDACTED].  
12 [REDACTED] [REDACTED]  
[REDACTED]  
14 [REDACTED]

15 A. Not specifically.

16 Q. Your letter indicates that the board has  
17 determined that Mr. Brown's earliest possible release  
18 date, based upon his sentence structure, is  
19 January 28th, 2025, correct?

20 A. Yes.

21 Q. Where did you get that information from?

22 A. I believe that I obtained the information  
23 from his file, after we received a petition, and the  
24 lead parole analyst had looked it over and scheduled  
25 the hearing.

1           Q.    And you also say, "Following the May 2017  
2 parole consideration hearing, the parole board will  
3 schedule a reconsideration hearing two years prior to  
4 the minimum eligibility date," correct?

5           **A.    Yes.**

6           Q.    Is that just a general practice? Or was  
7 that a special decision being made for Mr. Brown's  
8 case?

9           **A.    I don't remember in this specific instance.**  
10 **Generally, offenders are scheduled two years prior to**  
11 **the minimum eligibility date.**

12          Q.    Do you know whether Mr. Brown's  
13 reconsideration hearing was scheduled two years prior  
14 to his minimum eligibility date?

15          **A.    No, I don't know that.**

16          Q.    In the hearings themselves, is there any  
17 sort of script that's used by the panel to run the  
18 hearings?

19          **A.    What do you mean "any sort of script?"**

20          Q.    Is there --

21          **A.    Not, like, an interview guide, or a set of**  
22 **questions to answer.**

23                   I was not involved in the preparation, but  
24 I believe there is a handout that may have circulated  
25 among the members that outlines the elements that they

1     **should cover.**

2             Q.     And then there's that board action sheet,  
3     which we discussed earlier today, the two-page board  
4     action sheet that's used during the hearing as well,  
5     correct?

6             A.     Well, it's not used during the hearing.  
7     **It's used to record decisions of the board and**  
8     **impressions.**

9             Q.     So the board action sheet, Exhibit 11, is  
10    completed after the hearing?

11            A.     Yes. Well, it's started before the  
12    **hearing, by the IPO, as part of the preparation.**

13            Q.     So what part of exhibit 11 does the IPO  
14    fill out?

15            A.     Name, DOC number, the guideline dates, or  
16    **the MPT are generated from what's entered into various**  
17    **screens in the offender database. So that's the only**  
18    **portion.**

19            Q.     MPT is minimum prison term?

20            A.     Yes, ma'am.

21                    **(Deposition Exhibit No. 26 was marked for**  
22    **identification.)**

23    BY MS. BREIHAN:

24            Q.     I'll show you Exhibit 26. It's  
25    Bates-stamped AG01492 through 1493.

1                   Were you present at this September 19, 2016  
2 board meeting?

3                   **A.     Yes.**

4                   Q.     And do you recognize this agenda for that  
5 meeting?

6                   **A.     I do.**

7                   Q.     Looks like you were planning to present or  
8 discuss elements of deliberation for juvenile life  
9 without hearings, correct?

10                  **A.     Yes.**

11                  Q.     Do you remember what you discussed during  
12 that board meeting on that topic?

13                  **A.     I don't recall specifically what we  
14 discussed.**

15                         I mean, it was likely, in looking at the  
16 elements, and showing them the additional areas on the  
17 prehearing report, I mean, I really don't remember that  
18 discussion. I don't think it was so much a  
19 presentation. At the board meetings, if there's a  
20 topic that wants to be discussed, their name gets  
21 behind it. Whether or not they lead that discussion.

22                  Q.     So this may be an indication that you  
23 presented on this topic or you raised it as an issue to  
24 be discussed, correct?

25                  **A.     Yes.**



1 Q. Do you remember which of those it was?

2 A. No. I really don't.

3 Q. And what do you mean by elements of  
4 deliberation? The factors that are listed of 558.047?

5 A. Elements of deliberation, yes, it would  
6 include those, as well as page two of the board action  
7 sheet, when you reflect reasons for decisions either  
8 being outside the guideline or denial of parole.

9 (Deposition Exhibit No. 27 was marked for  
10 identification.)

11 BY MS. BREIHAN:

12 Q. I'll show you the minutes from the meeting.  
13 Exhibit 27. Bates-stamped AG01611 to 1612.

14 Does this refresh your recollection about  
15 what you might have discussed regarding elements of  
16 deliberation in juvenile life without hearings?

17 A. Yes.

18 Q. And is this the summary under bullet point  
19 3, a fair summary, to the best of your recollection.  
20 About what was discussed on that topic?

21 A. The best as I can recall.

22 Q. And you indicate that Michelle Kasak and  
23 her staff created a worksheet to explain the elements  
24 required for consideration during deliberation,  
25 correct?

1           **A.    Yes.**

2           Q.    And that you're working with Kim Evans to  
3   make sure notifications are being made.  I'm assuming  
4   victims and representatives?

5           **A.    Yes.  And prosecutors.**

6                   **(Deposition Exhibit No. 28 was marked for**  
7   **identification.)**

8   BY MS. BREIHAN:

9           Q.    I'm showing you what's been marked Exhibit  
10   28.  It's AGO28.

11                   Is this a worksheet that Michelle Kasak and  
12   her staff created explaining the elements required for  
13   consideration during deliberation?

14           **A.    No.  I believe that that worksheet was**  
15   **Exhibit 23.**

16           Q.    The juvenile life without PHR worksheet?

17           **A.    Yes.**

18           Q.    I guess I'm confused.  I thought  
19   deliberation was by the panel or the board; is that not  
20   correct?

21           **A.    I don't think the minutes accurately**  
22   **reflect the discussion.**

23                   Michelle created a prehearing worksheet, to  
24   capture elements which would then be put in a report,  
25   that the board could then use that information during

1     **the hearing and during deliberation.**

2             Q.     Do you know if Michelle Kasak and her staff  
3     are the ones that designed this Exhibit 28?

4             A.     No. I don't know that.

5             Q.     Who designed this Exhibit 28?

6             A.     I believe that Steve Mueller and the  
7     analysts group developed this worksheet.

8             Q.     If you compare it to the language in Senate  
9     Bill 590, it appears to be a copy and paste of the five  
10    bullet points that are listed under 558.047, correct?

11            A.     The bullets are. That's not the purpose of  
12    this.

13            Q.     What's not the purpose of this?

14            A.     The purpose of this was not to guide and  
15    ask questions.

16                    The purpose of this was to document, under  
17    each of the elements in the statute, what evidence you  
18    found, either in the report or through the hearing, to  
19    substantiate your determination of whether or not --  
20    for example, in number one, there was efforts made  
21    toward rehabilitation or not.

22            Q.     So who actually completes this form?

23            A.     I believe the parole analyst is completing  
24    it at the hearings. But I can't be positive.

25            Q.     Is it completed immediately following

1 conclusion of the hearing?

2           **A. I would hope that it's being completed**  
3 **during the hearing, as those elements may be brought**  
4 **out, that they're being documented as they're being**  
5 **discussed.**

6           Q. And this same form is used during every  
7 juvenile life without parole hearing under Senate Bill  
8 590, correct?

9           **A. I don't know.**

10          Q. After it's completed, do you know what  
11 happens to this form?

12          **A. It's retained.**

13               Well, it would be attached to the board  
14 action sheet for other members to look at as they were  
15 voting on the case. And then it would be retained in  
16 the file with the board action sheet.

17          Q. And in the juvenile life without context,  
18 the voting, does it occur in the same way that you  
19 described earlier, where it's passed from board member  
20 to board member?

21          **A. Yes. Unless it was a case that the board**  
22 **wanted to bring to executive board and talk about it.**

23          Q. Do you know if that happened with any of  
24 the juvenile live without cases?

25          **A. I don't know that because that's a closed**

1     **meeting.**

2                     **(Deposition Exhibit No. 29 was marked for**  
3     **identification.)**

4     BY MS. BREIHAN:

5             Q.     I'll show you what I'm marking as  
6     Exhibit 29.   It's Bates-stamped AG01605 through 1608.  
7     It looks like the minutes from the analysts meeting on  
8     December 23rd, 2016.

9                     Do you remember being present at that  
10    meeting?

11            **A.    Yes.**

12            Q.    Do you recall a discussion about juvenile  
13    life without parole?

14            **A.    Not specifically.**

15            Q.    And you can take the time you need.

16            **A.    We had a lot of discussions.**

17            Q.    You can take the time you need to review  
18    the section, that starts at the bottom of the first  
19    page and into the second, regarding the juvenile life  
20    without parole.   If you need to refresh your memory.

21                     As of December 23, 2016, do you know how  
22    many Senate Bill 590 hearings the board had conducted?

23            **A.    Not off the top of my head.**

24            Q.    Do you know if it had made any decisions on  
25    the juvenile life without parole cases?

1           **A.    I don't remember.**

2           Q.    There's a question in here I hope you can  
3 clarify for me. It's a question that was actually  
4 raised during this discussion. "If there are no  
5 guidelines for the offender, does there need to be a  
6 reason marked on the second sheet of the BAS?"

7                   I assume that means board action sheet?

8           **A.    Yes.**

9           Q.    Can you tell me what specifically they're  
10 talking about there?

11                   If you need to refer back to Exhibit 11,  
12 you can do so.

13           **A.    Well, the reasons on page two of the board**  
14 **action sheet, the second page, it has a section for why**  
15 **a reason might be outside the guidelines. Well, if**  
16 **there are no guidelines, then why do you have to**  
17 **justify a decision outside of them?**

18                   So I -- we just had discussion in general  
19 on whether or not you needed to mark a box. Because in  
20 these cases, there was -- you technically wouldn't have  
21 to fill out the board action sheet completely and  
22 correctly.

23           Q.    So what are the guidelines that are being  
24 referred to during this discussion?

25           **A.    They are in the appendixes of the**

1     **Blue Book. Time-to-serve guidelines, which are a range**  
2     **of months based upon your salient factor score, class**  
3     **of offense, and offense grouping.**

4             Q.     And why were those guidelines not used for  
5     juvenile life without parole?

6             A.     Because the board doesn't use guidelines  
7     for sentences of 30 years or more.

8             Q.     But they still use the salient factor score  
9     that you testified to earlier today?

10            A.     Yes.

11            Q.     And you also indicate that, "the worksheet  
12     filled out during the hearing provides enough  
13     reasonings for denial of parole beyond the reasons  
14     recorded on the offender notice."

15                   What are you referring to by the worksheet  
16     filled out during the hearing? The two-page board  
17     action sheet?

18            A.     No. I'm referring to the Exhibit 28.

19            Q.     So in your opinion, then, the information  
20     in this that would be filled out in Exhibit 28, and the  
21     notice to the inmate regarding the decision, would  
22     provide enough reasoning for the denial of parole,  
23     correct?

24            A.     Well, I think the discussion was more that  
25     there was no statutory requirement to give a specific

1     reason for denial of parole; that it was up to the  
2     panel to determine what reason and how much detail they  
3     wanted to give.

4             Q.     And you felt, though, that the information  
5     in Exhibit 28, and the notice to the inmate, was enough  
6     information to support any denial for parole; is that  
7     correct?

8             A.     Yes.

9                     (Deposition Exhibit No. 30 was marked for  
10    identification.)

11    BY MS. BREIHAN:

12             Q.     I'll show you Exhibit 30. This was  
13     Exhibit 7 to our complaint. I don't know if you got  
14     this far when you got on our website.

15                     I'll represent to you these are notices  
16     that our clients, and others, received after parole  
17     consideration.

18                     Are these the notice sheets that go to an  
19     inmate after they've had a SB 590 hearing?

20             A.     Yes.

21             Q.     And it looks like the reasons for the  
22     decision are provided in those lines on the bottom of  
23     the page, correct?

24             A.     Yes.

25             Q.     So turning to the second page, Sidney



1     Roberts, it says, "the reasons for the action taken  
2     are" -- and we'll ignore that line that says it's not  
3     subject to appeal -- "release at this time would  
4     depreciate the seriousness of the present offense,  
5     based on A, circumstances surrounding the present  
6     offense."

7                     Did I read that correctly?

8             **A.     Yes.**

9             Q.     In your opinion, that's enough of a basis  
10     of denying parole to Mr. Sidney -- or Mr. Roberts,  
11     correct?

12                    MR. SPILLANE: I'll object to the form of  
13     the question. I think it mischaracterizes her earlier  
14     testimony.

15                    But subject to that, you may answer.

16                    THE WITNESS: I believe that what is on the  
17     board action sheet is transcribed onto the notice. And  
18     in reading the statute, I don't believe that we are  
19     required to give any other reason.

20     BY MS. BREIHAN:

21             Q.     I understand you don't think there's any  
22     statutory reason to add any additional language to the  
23     notice. I understand that's what you're saying.

24                    My question is, do you think that this  
25     notice here to Mr. Roberts provides enough reasoning

1 for denial of parole?

2 **A. Yes.**

3 Q. When you indicated that you shared this  
4 during this analysts meeting on December 23, 2015, did  
5 anyone disagree with you?

6 **A. No, I don't think so.**

7 **(Deposition Exhibit No. 31 was marked for**  
8 **identification.)**

9 BY MS. BREIHAN:

10 Q. I'll show you Exhibit 31. It's  
11 Bates-stamped AGO2835 through 2837.

12 Have you seen this board action sheet for  
13 Mr. Roberts before today?

14 **A. No.**

15 Q. Have you seen a completed board action  
16 sheet for any of the juvenile life withouts?

17 **A. No.**

18 Q. No.

19 Can you show me where on these three pages  
20 it's indicated the reason for denying Mr. Roberts'  
21 parole?

22 **A. The reason?**

23 Q. Yeah. I'm looking at this.

24 **A. If you look at page two, the reasons for**  
25 **decisions above guideline, 1A is checked.**

1 Q. Is there anywhere elsewhere it indicates  
2 the reason that he's denied?

3 A. No.

4 Q. And there are no notations in the hearing  
5 panel comments section of the first page, correct?

6 A. Correct.

7 Q. Is that typical, in your experience?

8 A. I think it varies, depending on who's  
9 conducting the hearing, and who is on the panel.

10 I always made it a point to make comments,  
11 because I believed that not only did it guide future  
12 decisions, but as an institutional parole supervisor,  
13 the IPO gets a copy of this, and that should help them  
14 talk to the offender and deliver that decision,  
15 especially when it's adverse.

16 Q. That makes sense, especially if there seems  
17 to be turnover on the board from time to time, correct?

18 A. Yes.

19 Q. Can you tell from this board action sheet  
20 who the board member was on Mr. Roberts' hearing panel?

21 A. Yes.

22 Q. Who was it?

23 A. [REDACTED].

24 Q. So you were an institutional parole officer  
25 once. If this came to you, and Mr. Roberts came to

1 your office and said, "I was denied. What can I do to  
2 increase my chances of a grant? What can I do to prove  
3 I'm ready for release next time?" What would you tell  
4 Mr. Roberts?

5 A. Those are difficult conversations to have.  
6 And I've sometimes had them for my officers, having sat  
7 on the panel, and been part of the deliberation.

8 And without divulging how the panel came to  
9 their conclusion, you know, sometimes, I believe that  
10 there is kind of an -- I don't want to say a window of  
11 release -- but I think there is.

12 And I think it's for most, either life  
13 sentences, or life without that then become  
14 board-eligible or extremely long sentences, when  
15 there's a death involved, and it's a murder-first or  
16 second-degree, you know, sometimes that window is  
17 between 25 and 30 years. And sometimes, based upon,  
18 you know, even though an offender might have done  
19 everything possible, the board's comfort level isn't  
20 quite there yet.

21 And so the hearing might be an opportunity  
22 to provide some further motivation, and some future  
23 things that that individual could do for the next  
24 go around.

25 And I don't know that there's a magic

1     number for them. And sometimes it is difficult to say  
2     to an offender: Look, based on the details and the  
3     heinous nature of your offense, or the brutality, the  
4     board may not get over that and decide to parole you.

5             Q. Are there ever reasons for a board's  
6     decision to deny parole which are not conveyed in this  
7     notice to the inmate, a group of which we've marked as  
8     Exhibit 30?

9             A. What do you mean?

10            Q. So going back to Mr. Roberts' denial notice  
11     that he received, it says he's denied based on the  
12     circumstances of the offense.

13                     Are there ever instances where the board  
14     is -- has other reasons for its decision that are not  
15     listed in this notice to the inmate?

16            A. No.

17            Q. The notice should contain the -- every  
18     reason why the board has denied parole.

19                     If there were issues with institutional  
20     behavior, that should be indicated there as well,  
21     correct?

22            A. Yes. I think that's how they crafted the  
23     board action sheet. If you're going to deny or go  
24     outside of a guideline, or above decisions, it needs to  
25     be on the sheet, or you don't use it.

1 Q. You talked about a magic window.

2 A. I don't know if it's magic.

3 Q. It might feel magical to some inmates.

4 (Deposition Exhibit No. 32 was marked for  
5 identification.)

6 BY MS. BREIHAN:

7 I'll show you Exhibit 32. It's been  
8 Bates-stamped AGO0450 to 453.

9 Do you recognize this?

10 A. Yes.

11 Q. Okay. It looks like it's a research memo  
12 prepared by Dr. Cristine Spinka, correct?

13 A. Yes.

14 Q. And who is Dr. Spinka?

15 A. She was a research analyst for the  
16 Department of Corrections.

17 Q. She's no longer with the DOC?

18 A. No.

19 Q. Do you know where she is?

20 A. Health and Human Services.

21 Q. And looks like this memo relates to life  
22 without parole hearing and release data, correct?

23 A. Yes.

24 Q. Do you know why she was preparing this  
25 memo?

1           **A.**    I believe at my request, based upon a data  
2   request from the Sentencing Project. And maybe the  
3   Marshal Group. I can't remember specifically.

4           **Q.**    And it looks like, among other things,  
5   Dr. Spinka includes parole hearing data for life  
6   sentences with possibility of parole?

7           **A.**    Correct.

8           **Q.**    And on the second page of the memo, it  
9   indicates by year, the average number of years served  
10  before parole for first and second-degree murder,  
11  correct?

12          **A.**    Yes.

13          **Q.**    And it looks like between 1991 and 2013,  
14  the average number of years served before parole is  
15  21.05, correct?

16          **A.**    Yes.

17          **Q.**    Has anyone ever said anything to you about  
18  the number of years that the Department of Corrections  
19  is expecting juvenile offenders to serve before they're  
20  going to be released on parole under Senate Bill 590?

21          **A.**    No.

22          **Q.**    Have you heard any rumors among staff about  
23  whether they might sort of be holding them for some  
24  magical term of years?

25          **A.**    No.

1           Q.    I got sidetracked. Exhibit 29,  
2   January 6th -- no, December 23rd analysts meeting. I  
3   want to go back to that to wrap that up.

4                   During this juvenile life without  
5   discussion, these minutes indicate that analysts were  
6   reminded that if an offender has an attorney as their  
7   delegate, they should be advised of their role during  
8   the hearing as a delegate, and no special allowances  
9   should be extended beyond what is offered to any  
10  delegate appearing before the panel.

11                  Do you recall a discussion during this  
12  meeting about the role of the delegate and when an  
13  attorney acts as a delegate?

14                **A.    Yes.**

15                Q.    And what do you recall from that  
16  discussion?

17                **A.    I recall it had been discussed, either with**  
18 **the chairman, or the board in general, because I think**  
19 **we had had some requests, and we maybe even received**  
20 **your request in petitions for a number of things. And**  
21 **that would substantially change the protocol from the**  
22 **hearing from what the board established.**

23                   And so we've had to do the same thing with  
24  victims. Because board members would take liberties,  
25  and, you know, allow a support person to give



1 testimony, when that's not their right.

2 So in order to be consistent, we kind of  
3 looked at both parties' roles, and said, you know,  
4 here's the purpose, here's what they're there for, it's  
5 not, you know, an evidentiary. We're not going to  
6 cross-examine people and have a true, you know, rehash  
7 all the evidence kind of discussion.

8 It was just if they're there as a delegate,  
9 and they want to provide information in support of a  
10 parole release, they certainly can do so.

11 Q. At the same time, one of the primary  
12 sources of materials for the board, at least in these  
13 juvenile life without cases, is trial testimony?

14 A. Yes.

15 Q. And trial records, correct?

16 A. Yes.

17 Q. And prosecutors are invited to attend the  
18 hearings, correct?

19 A. Yes.

20 Q. And at times, you may or may not be  
21 aware -- strike that.

22 At times, are you aware of prosecutors  
23 arguing about facts of the case at these juvenile life  
24 without hearings?

25 A. I'm not aware of that.

1           Q.    So after this analysts hearing, there was  
2   also a board meeting where juvenile life without parole  
3   was discussed.

4                   (Deposition Exhibit No. 33 was marked for  
5   identification.)

6           Q.    This is No. 33.  It's Bates-stamped  
7   as AGO414 through 416.

8                   Do you recall being present at the  
9   January 6th, 2017 board meeting?

10          **A.    Yes.**

11          Q.    Do you recall having a discussion at the  
12   about juvenile life without paroles?

13          **A.    Yes.**

14          Q.    And you -- looks like you requested a  
15   debriefing on any cases that the board analysts had  
16   heard to date, correct?

17          **A.    Yes.**

18          Q.    Why were you asking for a debriefing?

19          **A.    Because not all the members had conducted**  
20   **that type of hearing yet.  And I think it is always**  
21   **important, and you can learn from others' experiences**  
22   **by just talking through what might have happened at**  
23   **similar hearings.**

24          Q.    And it looks like Mr. Wells debriefed a  
25   case -- that the minutes here indicated -- that

1 the case included a defense attorney's difference of  
2 opinion.

3 Do you recall any specifics that Mr. Wells  
4 shared about that case?

5 **A. I don't remember the specifics.**

6 Q. Mr. Mueller -- the minutes indicates --  
7 also shared that he spoke with Carolyn Colter, of the  
8 AG's office. And that he was advised by her to conduct  
9 hearings as normal, with the additional criteria  
10 outlined in 558.447, correct?

11 **A. Yes.**

12 Q. Do you recall anything specific about the  
13 discussion on that topic?

14 **A. Yes. It was as a result of your**  
15 **organization's petitions to deviate from our normal**  
16 **protocol.**

17 Q. So you recall receiving petitions from --

18 **A. They're probably in here.**

19 Q. -- from the MacArthur Center?

20 **A. Yes.**

21 Q. Let's see. You indicated that it was in  
22 the materials that you brought today?

23 **A. I believe it is.**

24 Q. Did you receive petitions like that from  
25 any other attorneys?

1           **A.    No, I don't think that we did.**

2           Q.    What was the reaction in the division when  
3 you received that petition?

4           **A.    Well, the reaction was that you were**  
5 **requesting information that is normally considered**  
6 **closed by the board, and not open for inspection to the**  
7 **offender. And to me, appeared to be in violation of**  
8 **victims' rights by statute.**

9           Q.    What specifically that we requested  
10 appeared to be a violation of victims' rights?

11          **A.    I'm not looking at that now.**

12               **Hold on.**

13          Q.    I think one of the --

14          **A.    Here it is.**

15          Q.    The document that was referenced is  
16 Bates-stamped Dills 45 through Dills 51; is that right?

17               It looks like Mae Quinn sent a memo to  
18 you-all that included as an attachment a request  
19 related to a parole hearing for Norman Brown?

20          **A.    Yes.**

21          Q.    Do you recall receiving this? This  
22 request?

23          **A.    Yes.**

24          Q.    And what did you do when you received it?

25          **A.    We started gathering the materials.**

1           Q.    Did you ever respond to Ms. Quinn regarding  
2   the various requests?

3           **A.    I don't remember if I did or not.**

4           Q.    Did you discuss these requests with any  
5   board member or a parole analyst?

6           **A.    Probably.**

7           Q.    Do you have -- what specifically do you  
8   recall discussing?

9           **A.    I don't even know what document --**

10          Q.    I was referring to what's marked as  
11   Dills 45 through 51.

12                   Why don't we pull it out and we can mark it  
13   as Exhibit 34.

14                   (Deposition Exhibit No. 34 was marked for  
15   identification.)

16                   THE WITNESS:   What's your question now?

17                   MS. BREIHAN:   Let's take the first  
18   question.

19                   Could you read it back, please?

20                   (Whereupon, the last question was read back  
21   by the reporter.)

22   BY MS. BREIHAN:

23          Q.    Do you recall discussing Exhibit 34 with  
24   any board member or analyst?

25          **A.    Not with a board member.   Possibly with an**

1     **analyst. But it would not have been my responsibility**  
2     **at that point in time.**

3             Q.     At that point in time you had transitioned  
4     over to community corrections?

5             **A.     Yes.**

6             Q.     So whose responsibility was it to respond  
7     to this request -- this lists of requests?

8             **A.     Um, it would have been Steve Mueller. I**  
9     **believe he probably would have communicated through our**  
10    **general counsel's office though.**

11            Q.     Do you recall having any discussions with  
12    Steve Mueller about this?

13            **A.     I don't recall specifically, no.**

14            Q.     And I think you testified earlier that a  
15    petition submitted by our office raised concerns about  
16    violating victims' rights.

17                    Do I understand what your testimony was?

18            **A.     Yes.**

19            Q.     Was it this petition you were thinking of?

20            **A.     No. It was earlier petitions.**

21            Q.     Understood.

22                    Do you remember the inmate's name, by  
23    chance.

24            **A.     I thought I had included one in here, in**  
25    **this packet of information.**

1           Q.    Maybe we can take a break and we can ask  
2 follow-up questions. But in the interest of time, we  
3 can return to our discussion of Exhibit 33, which is  
4 the minutes from the board meeting on January 6th,  
5 2017.

6                   Turn back to 33 for me. We were walking  
7 through that document. And we sort of got segued or  
8 sidelined on Mr. Mueller's discussions.

9                   Looks like Gary Dusenberg and Charlie Baker  
10 shared details as to what is referred to as a heinous  
11 case.

12                   Do you remember what case that is?

13           **A.    I don't remember specifically.**

14           Q.    Do you remember any of the details of that  
15 conversation?

16           **A.    No.**

17           Q.    It looks like the majority board gave that  
18 person a release date, correct?

19           **A.    Yes.**

20           Q.    And then the last couple sentences of that  
21 section, you asked, was everyone satisfied with the  
22 information provided in the prehearing reports,  
23 correct?

24           **A.    Yes.**

25           Q.    And everyone seems pretty happy with the

1 information in those reports, correct?

2 **A. Yes.**

3 Q. Did anyone at this meeting, or outside the  
4 meeting, ever express to you concerns or  
5 dissatisfaction with the information in those  
6 prehearing reports?

7 **A. No.**

8 Q. And did you ever personally review any of  
9 the prehearing reports?

10 **A. No.**

11 Q. And the action item here indicates that  
12 Rick Kuttenkuler will advise the File Bound group to  
13 attach the JL WOP requests to the board action sheet  
14 for filing purposes.

15 What is that? What is File Bound?

16 **A. It's our digital virtual file system.**  
17 **Where all documents are kept.**

18 Q. Fair to say that the central parole file is  
19 stored in a hard copy and electronically?

20 **A. No, that's not accurate. It's stored in**  
21 **its entirety digitally. The only thing that's retained**  
22 **in the hard copy file are the sentencing documents, the**  
23 **board action sheet, and victim profile.**

24 Q. So the hard copy file that gets passed  
25 around is not the complete parole file; is that right?



1           **A.     Right.**

2           Q.     What happens if, hypothetically, the  
3     MacArthur Justice Center submits multiple pages of  
4     letters and materials in support of an inmate's request  
5     for release on parole in advance of a hearing under  
6     SB 590, would that letter be in that hard copy file  
7     that's passed around?

8           **A.     Yes.   Any material that is currently being**  
9     **considered on any report, any ancillary, we attach it**  
10    **to the hard file.**

11          Q.     Understood.

12                 And then at some point at this meeting on  
13     January 6th, you ask about training, any other areas of  
14     interest for training.

15                 I'm looking at page two of three. And  
16     there is some suggestions about team building, and a  
17     couple conferences are mentioned, correct?

18          **A.     Yes.**

19          Q.     No one asked about or suggested training  
20     regarding adolescent development?

21          **A.     No.**

22          Q.     Or child psychology?

23          **A.     No.**

24          Q.     Or Senate Bill 590?

25          **A.     No.**

1           Q.    Do you remember if any such training was  
2   ever requested outside of this January 6th, meeting?

3           **A.    No.**

4           Q.    Do you recall a training being offered, or  
5   an invitation being extended, by the Campaign for Fair  
6   Sentencing of Youth?

7           **A.    Kind of rings a bell with me, but I can't**  
8   **recall specifically.**

9                   **(Deposition Exhibit No. 35 was marked for**  
10   **identification.)**

11   BY MS. BREIHAN:

12           Q.    I will show you what I've marked as  
13   Exhibit 35.  This is Bates-stamped AG01200 through  
14   1203.

15                   Does this refresh your recollection?

16           **A.    Vaguely.**

17           Q.    Looks like Nicola Nable-Juris reaches out  
18   to Jennifer Zamkus, to invite Ms. Zamkus to the annual  
19   conference in Washington D.C., and Ms. Zamkus forwards  
20   this to you, and to Mr. McSwain, with a -- basically a  
21   request for guidance on how to respond, correct?

22           **A.    Uh-huh.**

23           Q.    And you step in, and offer to respond on  
24   her behalf, indicating that the chairman prefers to  
25   limit participation with groups or organizations that

1 might call into question our impartiality, correct?

2 **A. Yes.**

3 Q. Are you familiar with the Campaign for Fair  
4 Sentencing of Youth?

5 **A. No.**

6 Q. Do you think that an organization that  
7 advocates for fair sentencing is inconsistent with the  
8 board's mission and would call into question their  
9 impartiality?

10 **A. Potentially.**

11 Q. Did you end up responding to Ms.  
12 Nable-Juris?

13 **A. I don't remember if I did or not.**

14 MS. BREIHAN: Let's take a quick break.

15 (A break was taken.)

16 BY MS. BREIHAN:

17 Q. So we had talked generally a while back  
18 about how the majority of general hearings are  
19 conducted by videoconference rather than in person.

20 Do you remember that testimony?

21 **A. Yes.**

22 Q. And there seems to be a trend in recent  
23 years for videoconferencing?

24 **A. Yes.**

25 Q. Do you know, with respect to the Senate

1 Bill 590 hearings, approximately what percent of those  
2 have been conducted by videoconference rather than in  
3 person?

4 **A. No, I don't.**

5 Q. And you also talked about how there might  
6 be times, because of an offender's mental health or  
7 function ability, that a video hearing might be  
8 inappropriate, correct?

9 **A. Correct.**

10 **(Deposition Exhibit No. 36 was marked for**  
11 **identification.)**

12 BY MS. BREIHAN:

13 Q. I'm going to hand you Exhibit 36. It's  
14 Bates-stamped AG01223 through 1224. It's a memo that  
15 you, and/or Mr. McSwain prepared, in 2015.

16 Do you recognize this?

17 **A. Yes.**

18 Q. Is this a memo that you wrote?

19 **A. Yes.**

20 Q. And this talks, among other things, about  
21 implementing videoconferencing, and instances where  
22 hearings might by preference be conducted in person  
23 rather than in video, correct?

24 **A. Yes. It was both ways: What do you need**  
25 **to take into consideration to have the best possible**

1     **hearing.**

2             Q.     And your first sentence in the second  
3     paragraph here says that, "Not all inmates pose the  
4     same level of risk, or require the same level of board  
5     review, or benefits from the same type of hearing."

6             What do you mean by "same level of board  
7     review?"

8             What are the different levels of board  
9     review?

10            I realize that's a compound question so  
11     I'll rephrase it.

12            What are the different levels that you're  
13     referring to?

14            **A.     One board member decision, versus majority**  
15     **board, versus full board.**

16            Q.     So panel, versus majority, versus full  
17     board?

18            **A.     Yes.   There are some board decisions that**  
19     **are not made by panels.**

20            Q.     Are there -- in what context?   Or under  
21     what circumstances are parole decisions made by only  
22     one board member and not a panel?

23            **A.     File review.**

24            Q.     What's that mean?

25            **A.     There are other decisions that a board**

1 makes outside of parole consideration for an offender,  
2 and they're not conducted through a hearing. It's  
3 through a file review.

4 Q. But all the SB 590 hearings are majority  
5 board decisions, correct?

6 A. Correct.

7 Q. Not full board decisions?

8 A. No. They can be.

9 Q. If there's a tie, or --

10 A. Or if the board member wants to refer it to  
11 a full board. They have the option, not only in the  
12 lower level case to refer something to majority, but  
13 they can refer to full.

14 Q. Do you know if that's occurred in the  
15 juvenile life withouts context?

16 A. No.

17 Q. And then you talk about they might not all  
18 benefit from the same types of hearings.

19 What different types of hearings are there?

20 A. A video or in-person hearing.

21 Q. Any other type of hearing that you were  
22 thinking about when you were preparing this memo?

23 A. No. It was specific to those two.

24 Q. And we talked about earlier -- you talked  
25 about earlier today that the assessment of whether an

1 inmate would be better served for an in-person hearing,  
2 rather than videoconferencing because of the cognitive  
3 limitations and the like, would be made by the  
4 institutional parole officer in conjunction with mental  
5 health professionals, correct?

6 **A. Yes.**

7 Q. Do you know who [REDACTED] is?

8 **A. I recall the name.**

9 Q. Do you recall receiving any correspondence  
10 from Mae Quinn, from my office, regarding Mr. [REDACTED]?

11 **A. Yes.**

12 **(Deposition Exhibit No. 37 was marked for**  
13 **identification.)**

14 BY MS. BREIHAN:

15 Q. I'm going to show you one of those  
16 correspondence. It's marked as Exhibit 37. It's  
17 Bates-stamped AG01574 through 1575.

18 This might be included with what you  
19 brought with you today.

20 **A. Probably.**

21 Q. Do you recognize this email correspondence?

22 **A. Yes.**

23 Q. And you indicate that this email is about  
24 [REDACTED] who has had a parole hearing  
25 December 2016, correct?

1           **A.     Yes.**

2           Q.     And you indicate that he already signed the  
3 video consent form, correct?

4           **A.     Yes.**

5           Q.     How did you know that?

6           **A.     Well, he wouldn't have been put on the**  
7 **video docket had he not signed the consent form,**  
8 **because it's forwarded to our office.**

9           Q.     And so who made the assessment about his  
10 cognitive ability and determined that he could proceed  
11 with a video hearing rather than an in-person hearing?

12          **A.     I'm assuming the IPO. I wouldn't know**  
13 **specifically.**

14          Q.     Have you been tracking the outcomes on  
15 these Senate Bill 590 hearings?

16          **A.     Not now.**

17          Q.     Not now that you're in community  
18 corrections?

19          **A.     Correct.**

20          Q.     One of the documents that you brought with  
21 you today, that's Bates-stamped Dills 40, is a request  
22 from Jasmine Willet, on your behalf, to David Owen  
23 about the JL WOP requests.

24                     And he's sending data about how many  
25 petitions have been received, how many hearings have



1     been held, how many release dates have been granted.

2                   Why would you have been corresponding with  
3     the public information office in July of 2017 about the  
4     JL WOP hearings if you were no longer involved in that  
5     process?

6                   **A.     Likely because Steve Mueller wasn't there.**

7     **He might have attempted to contact him first.**

8                   Q.     What do you mean Steve Mueller wasn't  
9     there?

10                  **A.     Like, out of the office. David would call,**  
11     **whoever he would call, because he needed the**  
12     **information upfront. And he got whoever he got, and he**  
13     **would follow up with an email request.**

14                  Q.     But you still had access to that  
15     information --

16                  **A.     Yes.**

17                  Q.     -- even if you weren't involved in it  
18     day-to-day?

19                  **A.     Yes.**

20                  Q.     Do you know, then, as you sit here today,  
21     approximately what percentage of those who received  
22     hearings under SB 590 have been granted outdates?

23                  **A.     No.**

24                  Q.     Do you know, as you sit here today, the  
25     average setback for inmates who received SB 590

1     hearings, but were denied immediate release?

2             **A.     No.**

3             **Q.     How does the board determine the**  
4     **appropriate setback if they're denying parole in the**  
5     **JL WOP context?**

6             **A.     There's no set -- I mean, generally**  
7     **if -- the longest you can set someone out is five**  
8     **years. And then any number of years from that.**  
9     **Generally, once you get them on the cycle, you only**  
10    **lower the cycle, you don't extend the cycle. But**  
11    **there's no criteria.**

12            **Q.     And when the board decides to give an**  
13    **outdate, are there criteria for determining how far in**  
14    **the future that outdate will be?**

15            **A.     Not on cases over 30 years. I mean,**  
16    **generally, the policy is that you need to set it within**  
17    **five years or you need to rehear. So you wouldn't go**  
18    **longer than the five-year term.**

19            **Q.     And is the inmate told at any point why**  
20    **they were given a particular setback?**

21            **A.     The same as they would be given -- they**  
22    **wouldn't be told the particulars. They would just be**  
23    **told why they were given the setback and denied parole.**

24                    **If there were comments on the board action**  
25    **sheet that you could refer to, or a decision marked, or**

1     reason marked, such as poor institutional adjustment,  
2     that's pretty much a heads-up that you need to clean up  
3     your conduct.

4             Q.     But we talked earlier about Mr. Roberts,  
5     the notice to him that indicated he was denied parole  
6     based on circumstances of the offense.

7                     Do you recall that?

8             A.     Yes.

9             Q.     And he was given a setback -- I believe it  
10     was four years.

11                    He -- on that same notice he received,  
12     which is page two of Exhibit 30, he wasn't provided any  
13     explanation with regard to why he received a  
14     four-year setback, as opposed to a one year or two-year  
15     setback, correct?

16            A.     Correct.

17            Q.     And everyone that has that had these  
18     hearings under SB 590, they've been incarcerated for at  
19     least 25 years, correct?

20            A.     Yes.

21            Q.     Are you still in contact with any current  
22     or former board members?

23            A.     What do you mean? I work with them.

24            Q.     On a regular basis?

25                    When's the last time you talked with Don

1 Ruzicka?

2 **A. Oh, probably not since May or so.**

3 Q. He recently retired from the board,  
4 correct?

5 **A. Correct.**

6 Q. Do you know the circumstances under which  
7 he left?

8 **A. Yeah.**

9 Q. And what are they?

10 **A. After the media released the contents of an**  
11 **investigation, he decided to resign and retire.**

12 Q. And you're referring to the investigation  
13 by Amy Rogers, the Inspector General, regarding his  
14 conduct at parole hearings?

15 **A. Yes.**

16 Q. When did you first come to learn of  
17 Mr. Ruzicka's misconduct at parole hearings?

18 **A. I don't recall the exact date in my head.**  
19 **But it was in, I think, June or July of 2016 when it**  
20 **was reported to me.**

21 Q. And who reported it to you?

22 **A. Kenny Jones.**

23 Q. Do you recall what he said?

24 **A. Yes.**

25 Q. What did he say?

1           A.    Well, he started in a roundabout manner  
2   saying, "I don't know if this is some new motivational  
3   interviewing technique, but you know how you get a song  
4   stuck in your head?"

5                   And this is over the telephone.  And I  
6   said, "I don't know what you're talking about."

7                   And he said, "You know, or, like, dressing  
8   all in black.  You know, things like that."  You know,  
9   "You keep saying I think things are not right."

10                  And I finally said, "Well, could you cut to  
11   the chase and tell me what's going on?"

12                  And he said, "I think that things are  
13   occurring, that are not professional, with Don and  
14   Brian, dressing alike, and saying things in parole  
15   hearings that were inappropriate."

16           Q.    And what did you say in response to that?

17           A.    I said, "Thank you for reporting it.  I'll  
18   take care of it."

19           Q.    And that was the end of the call?

20           A.    Yes.  With him.  And I said, "Don't discuss  
21   it with the analyst that's in your car right now" --  
22   because I knew they were on the way to a hearing --  
23   "and don't talk about it any further."

24           Q.    Do you know which analyst was in the car  
25   with Mr. Jones during that call?

1           **A.     Yes.**

2           Q.     Who was it?

3           **A.     Mike Davis.**

4           Q.     And then what did you do after your  
5 conversation with Mr. Jones?

6           **A.     I reported it to Julie Kempker, the chief  
7 state supervisor, because Chairman McSwain was out on  
8 bereavement leave.**

9           Q.     And did you prepare a memo to Mr. McSwain  
10 regarding the conduct that you had learned about?

11          **A.     Yes, I did.**

12                   **(Deposition Exhibit No. 38 was marked for  
13 identification.)**

14 BY MS. BREIHAN:

15          Q.     I'll hand you what's marked as Exhibit 38.  
16 It's Bates-stamped AGO 1486 through 1488.

17                   Is this a copy of the memorandum that you  
18 prepared regarding the misconduct by Mr. Ruzicka and  
19 Mr. George?

20          **A.     Yes.**

21          Q.     Do you know what happened after you  
22 prepared this memorandum?

23          **A.     A request for investigation was requested  
24 to the Attorney General's Office, after conversations  
25 were had with the Governor's office, if a board member**

1       **could or could not even be investigated.**

2               Q.     Were you part of those conversations with  
3     the Governor's office?

4               A.     **No.**

5               Q.     Who was?

6               A.     **I would assume Director Lombardi and Ellis**  
7     **McSwain. Potentially. Or general counsel. I don't**  
8     **know.**

9               Q.     And there was an investigation eventually  
10    conducted by the Inspector General, correct?

11              A.     **Yes.**

12              Q.     What did that investigation reveal; do you  
13    know?

14              A.     **Yes.**

15              Q.     What did that investigation reveal; do you  
16    know?

17              A.     **It revealed instances of both parties**  
18    **inserting nonsensical words, song titles, and other --**  
19    **and trying to kind of playing a game with a point**  
20    **system by those two.**

21              Q.     By those two you mean?

22              A.     **Don Ruzicka and [REDACTED].**

23              Q.     And [REDACTED] is a parole analyst and is  
24    still employed by the Division of Probation and Parole,  
25    correct?

1           **A.    Yes.**

2           Q.    And he's still conducting hearings on a  
3 regular basis?

4           **A.    Yes.**

5           Q.    What repercussions did he face for his  
6 participation in this game?

7           **A.    He was subject to disciplinary action.  I**  
8 **believe he was suspended.**

9           Q.    With pay?

10          **A.    No.**

11          Q.    Do you know how long he was suspended?

12          **A.    No.  I don't remember.**

13          Q.    Do you remember the substance of your  
14 conversation with Mr. Mueller about this game-playing?

15          **A.    Yes.**

16          Q.    What did he share with you?

17          **A.    Well, I mean, I had just asked him, had**  
18 **there been instances of this occurring in the past, and**  
19 **how did it get dealt with?**

20                You know, it was new to me.  I never, ever,  
21 in my wildest dreams would have thought someone would  
22 take liberty with an offender's situation and play  
23 games.

24                And so, you know, he said, "Well, there  
25 might have been, like, maybe you want to -- the word of



1 the day, or how many times somebody said something."

2 But it wasn't planned. It was more like listening.

3 Like, how many times did you hear an offender say this?

4 Or that? I.

5 Mean, I can't recall specifically, but it  
6 was nothing to the degree of what we had already  
7 uncovered, based on listening to tapes.

8 Q. How many tapes did you listen to?

9 A. I don't even remember. I mean, hundreds  
10 probably.

11 Q. Who else listened to them?

12 A. Pam Rogers.

13 Q. Anyone else?

14 A. No.

15 Q. And as part of her investigation,  
16 Amy Rogers, the Inspector General, listened to tapes as  
17 well, too?

18 A. Yes. The ones where we had found instances  
19 were the ones that we had given to her.

20 Q. How did you decide which tapes to review?

21 A. We looked at the hearing calendar and  
22 picked all of the times -- I don't remember the time  
23 frame that we went back on, just off the top of my  
24 head -- but every time that they were together, we  
25 listened to those dockets.

1           Q.    Was it every time they'd been together for  
2   a year?  Less than a year?

3           A.    **I don't remember.  It wasn't more than a**  
4   **year.**

5           Q.    Have you read the Attorney General's  
6   report?

7           A.    **Yes.**

8           Q.    Have you had any conversations with any  
9   board member about that investigation or the report  
10   that Amy Rogers prepared?

11          A.    **Not in detail.**

12          Q.    When did you first read the report?

13                Because it was prepared in November of  
14   2016, correct?

15          A.    **Yes.**

16          Q.    When did you first read it?

17          A.    **It was at some point in November when it**  
18   **was given to me so that I could initiate the**  
19   **disciplinary proceedings against them.**

20          Q.    And who was responsible for initiating the  
21   disciplinary proceedings against Mr. Ruzicka?

22          A.    **The Governor's office.**

23          Q.    Were you a part of that discussion at all?

24          A.    **No.  Not a part of it.**

25          Q.    Sounds like your answer is qualified

1 somewhat.

2           **A. I overheard a discussion between the**  
3 **chairman and general counsel.**

4           Q. And what did you hear?

5           MR. CRANE: Hold on.

6           Was it a conversation in which the chairman  
7 was seeking legal advice from the general counsel's  
8 office about what to do in this situation?

9           THE WITNESS: I believe he was being  
10 instructed on what he could not do.

11           MR. CRANE: So he was asking what the legal  
12 ramifications might be?

13           THE WITNESS: Yes.

14           MR. CRANE: I'm going to object that the  
15 answer is probably attorney-client privilege.

16           MS. BREIHAN: Okay. We will be taking his  
17 deposition in a couple weeks. We'll take it up, if  
18 necessary.

19 BY MS. BREIHAN:

20           Q. Other than the discussion that you  
21 overheard, were you privy to any other discussions  
22 about what, if any disciplinary action to take against  
23 Mr. Ruzicka, for his participation in these games?

24           **A. No.**

25           Q. What was the general response among the

1 analysts when this investigation was completed in  
2 November of 2016?

3 A. I don't know that the analysts, in general,  
4 had -- I don't think they knew it was going on, because  
5 disciplinary proceedings are confidential.

6 And so, you know, while I think they knew  
7 something had happened, and then, I think, that  
8 following the investigation, and many of them being  
9 interviewed as a part of the investigation to see if  
10 they, or other people participated, they were  
11 both -- they were pretty appalled that that kind of  
12 behavior had taken place.

13 Q. Was there any sort of training provided to  
14 the analysts or the board members afterward about  
15 ethics or professional conduct?

16 A. Not to my knowledge.

17 I mean, I think that [REDACTED] was  
18 required to go through an ethics training through the  
19 Department of Corrections. I think it was encouraged  
20 to done. But whether or not they attended, I don't  
21 know.

22 Q. And aside from an instance like that, where  
23 an investigation could be requested from the  
24 Attorney General's Office, is there any sort of  
25 oversight as to what kind of conduct takes place on the

1 part of the panel during these parole hearings?

2 A. Not in a proactive way.

3 I mean, there would be some occasions, when  
4 I had the time, where I would go audit hearings and  
5 listen.

6 But generally it was fueled by a complaint.  
7 Whether that be from our own staff based upon a comment  
8 that someone made.

9 It could have been a board member, based  
10 upon a comment that an institutional supervisor raised.

11 Many times it was the offender's family who  
12 complained.

13 So we would listen, and review the tape,  
14 and provide some coaching, if necessary.

15 Q. And you testified earlier that this  
16 was -- this investigative report was eventually made  
17 public, correct?

18 A. Yes.

19 Q. I'd imagine that you in the Division of and  
20 Probation and Parole received a number of complaints or  
21 inquiries, after that information was made public; is  
22 that fair?

23 A. I don't know. I wasn't in that position.

24 Q. But you were still staying on top of the  
25 issue, weren't you?

1           A.    I mean, I knew it had been released.  I  
2   wasn't tracking how many phone calls that we got about  
3   the issue.

4           Q.    And you weren't reviewing any hearing  
5   complaints at that point?

6           A.    No.

7           Q.    But you were forwarding news articles to  
8   Ellis McSwain?

9           A.    Yes.

10          Q.    Why would you be doing that?

11          A.    Because it's what we feared.  We always  
12   knew the other shoe was gonna drop.

13                   I mean, the right thing to do, is after he  
14   was caught, Don Ruzicka should have resigned.

15                   And, no, it wouldn't have made it better,  
16   but it would have been, to me, the right way to make  
17   amends.

18          Q.    Do you know why he didn't do that?

19          A.    No, I don't know.

20          Q.    Did you have any discussions with anyone on  
21   the board or parole staff about making the Inspector  
22   General report public before June of 2016?

23          A.    About making it public?

24          Q.    Yes.

25          A.    I wasn't involved.  No.

1           Q.    You didn't encourage anyone, for example,  
2   to -- sounds like you thought it should have been, you  
3   know, transparent from the get-go, right?

4           **A.    Yes.**

5           Q.    Did you encourage anyone on the board,  
6   or -- to make that -- make a public statement about  
7   what had happened?

8           **A.    Not that I can remember.**

9           Q.    Are you aware of any other unprofessional  
10   conduct that occurred at hearings, other than what's  
11   detailed in Amy Roger's report?

12          **A.    Yes.**

13          Q.    What conduct are you aware of that you feel  
14   is unprofessional?

15          **A.    Just certain words sometimes can be viewed**  
16   **as derogatory. Or sometimes certain phrases. But**  
17   **outside of that, I mean, nothing that is patterns or**  
18   **sustained misconduct.**

19          Q.    Can you give me an example of one of the  
20   derogatory words or phrases that you're thinking of?

21          **A.    I think there was one reference to a board**  
22   **member making a comment after a hearing, "I sure hope**  
23   **that guy doesn't go out and be a terrorist."**

24                   And we had an observer in the room that  
25   took offense of that based upon his ethnic origin.

1           Q.    Do you know which board member made that  
2   comment?

3           **A.    Gary Dutzenberg.**

4           Q.    And he still sits on the board, correct?

5           **A.    Yes.**

6           Q.    Are there any other derogatory words or  
7   phrases that come to mind?

8           **A.    No.   Not off the top of my head.   More**  
9   **often than not, the complaints were unsubstantiated.**

10          Q.    Complaints from inmates?

11          **A.    Or even from staff.   That maybe -- it has**  
12   **been a sensitive time for our department.   And so staff**  
13   **have kind of felt that, lately, they need to report**  
14   **everything.**

15          Q.    What do you mean it's been a sensitive time  
16   for the department?

17          **A.    Well, the Department of Corrections has**  
18   **been slammed in the news media for sexual harassment**  
19   **lawsuits from former employees and current employees.**

20          Q.    Do you think the criticism of the  
21   department is unwarranted?

22          **A.    No.**

23                   **(Deposition Exhibit No. 39 was marked for**  
24   **identification.)**

25   BY MS. BREIHAN:



1           Q.    I'll hand you what I've been marked as  
2   Exhibit 39.  AGO 595 through 602.

3                   Do you recognize this email?

4           **A.    Yes.**

5           Q.    Looks like an email from you to Mr. McSwain  
6   on July 13th, 2015, correct?

7           **A.    Yes.**

8           Q.    And you're forwarding an article by the  
9   Marshal Project, correct?

10          **A.    Yes.**

11          Q.    And you say "some not so very nice  
12   commentary from a former employee?"

13          **A.    Correct.**

14          Q.    Who are you referring to there?

15          **A.    I'm not sure specifically in this article,**  
16   **having not read it in a couple of years, but I would**  
17   **assume it was the former parole analyst, Richard Lee,**  
18   **and possibly a former board staff person by the name of**  
19   **Jan Barton.**

20          Q.    She was your predecessor, right?

21          **A.    Yes.**

22          Q.    Did you -- your time at the Department of  
23   Corrections overlap at all?

24          **A.    Yes.**

25          Q.    Did you ever get to work closely with

1 Ms. Barton?

2 A. Yes.

3 Q. In what capacity?

4 A. She supervised the analysts group.

5 I supervised institutional regions.

6 Whenever we had to roll out new initiatives, it was  
7 very important that we worked together and develop  
8 processes that satisfied both groups.

9 Q. Did you ever work with Cranston Mitchell?

10 A. Yes.

11 Q. Did you ever work with him while you  
12 were --

13 A. Not closely.

14 (Deposition Exhibit No. 40 was marked for  
15 identification.)

16 BY MS. BREIHAN:

17 Q. It looks like you forwarded this email to  
18 Mr. McSwain, this article, on two occasions.

19 I'll show you the other. It's marked now  
20 as Exhibit 40. It's Bates-stamped AG0611 through 618.

21 Looks like Ms. Kempker sends it to you, and  
22 you respond, and there's conversation about the article  
23 having been discussed with the director that morning.

24 Is that referring to Director Lombardi?

25 A. I would assume so.

1           Q.    Do you remember having a discussion with  
2   Mr. Lombardi about this article?

3           A.    No.   The context would have been Julie  
4   sending it to Ellis.   And the comments would have been  
5   at a DOC executive staff meeting, which they would have  
6   sat in on with him.

7           Q.    So Mr. McSwain would have been privy to  
8   that conversation, but not you?

9           A.    Correct.

10          Q.    Did he share with you what the director  
11   said about this article?

12          A.    No.

13          Q.    Did Ms. Kempker share that with you?

14          A.    No.

15          Q.    And it refers to quotes by Janet Barton,  
16   correct?

17          A.    Yes.

18          Q.    If we look on the page that's Bates-stamped  
19   612, toward the very end of that page, there's a quote  
20   by Ms. Barton, it refers to the Missouri parole process  
21   as "close to the extreme," correct?

22          A.    Yes.

23          Q.    Would you agree with that statement?

24          A.    Yes.

25          Q.    She's also quoted later in the

1 article -- if you go to the page that's Bates-stamped  
2 616, toward the bottom -- Ms. Barton talks a little bit  
3 about the voting process. And that "board members  
4 might not even look at the case or read the file before  
5 they decide the case, they just go based on what others  
6 say."

7 Based on your experience, is that true?

8 **A. I don't believe that's true.**

9 Q. She also says that, "forms always, or  
10 almost always, indicate that release would depreciate  
11 the seriousness of the present offense, but that's not  
12 always the truth."

13 Is that fair to say?

14 **A. I don't believe so.**

15 Q. Which part of that do you disagree with?

16 Do you agree that in most cases when parole  
17 consideration is denied it's denied based on the  
18 circumstances of the offense?

19 **A. Yes, I do.**

20 Q. Do you agree with her statement that reason  
21 given was not always the truth?

22 **A. No, I don't agree.**

23 Q. Did you have any conversations with anyone  
24 in the Division of Probation and Parole regarding this  
25 article?

1           **A.     Probably.**

2           Q.     Do you recall, who do you recall discussing  
3 this article with?

4           **A.     Probably with Steve Mueller.**

5           Q.     And what did you say to Mr. Mueller about  
6 this article?

7           **A.     I think we were surprised that someone**  
8 **would slam the system that they worked to build.**

9           Q.     So Ms. Barton helped to build the Missouri  
10 parole system?

11          **A.     I mean, she was a key element in developing**  
12 **policies and procedures.**

13                   She developed the board action sheet, in  
14 conjunction with members. And so if she was so opposed  
15 to the way that they did business, she should have done  
16 something to change it. Or suggested it.

17          Q.     And you even have indicated to our office,  
18 and others, that these records are closed records,  
19 right?

20          **A.     Yes.**

21          Q.     And that's why inmates can't see their own  
22 parole files?

23          **A.     Yes.**

24          Q.     And is that a matter of internal policy and  
25 procedure?

1           **A.     Well, I believe it's a matter of statute.**

2           **Q.     So in your capacity as board operations**  
 3     **director, would you have been able to change that, to**  
 4     **your knowledge?**

5           **A.     No. Not on my own. I don't believe you**  
 6     **can change the amount of information that we could**  
 7     **give.**

8           **Q.     I'm sorry, can repeat that?**

9           **A.     I said I don't think I could have changed**  
 10    **the amount of information that would was allowed to be**  
 11    **shared with an inmate.**

12          **Q.     Do you know how many hearings, on average,**  
 13    **the parole board conducts per year?**

14          **A.     About 11,800.**

15          **Q.     Do you have any sort of sense of the**  
 16    **average time between when the parole hearing is**  
 17    **conducted and when a decision is made?**

18          **A.     I think the average time, when we**  
 19    **calculated it, was about three weeks. But sometimes**  
 20    **longer. It depends on how many have to vote.**

21          **Q.     Do you recall when this lawsuit was filed?**

22          **A.     I could guess.**

23          **Q.     I don't want you to guess.**

24          **A.     I mean, I wanna say between December,**  
 25    **January. Am I way off?**

1           Q.     It was in May of this year.

2           A.     Oh.   There must have been some other things  
3   that you filed.

4           MR. CRANE:   There are other lawsuits filed,  
5   both by them and other attorneys.

6           THE WITNESS:   Yes, I know.

7   BY MS. BREIHAN:

8           Q.     Since this lawsuit was filed -- and I know  
9   that you transitioned out from your position as board  
10   operations director -- but, to your knowledge, have  
11   there been any discussions by the board of parole  
12   analysts about training for handling these juvenile  
13   life without hearings specifically?

14          A.     I don't know.

15          Q.     Was this transition out from the board  
16   operations director position voluntary?

17          A.     Yes.

18          Q.     Why did you want to switch?

19          A.     Well, actually, it had been in the works  
20   since probably November or December of last year.

21                 And we had submitted a proposal -- Julie  
22   did -- and had it for me to move out from under the  
23   parole board chairman, and to start engaging myself  
24   with field operations, because that was seeming to  
25   take -- working on all of her stuff, like the earned

1 compliance credits, most of my time.

2 The deputy department director would not  
3 let us proceed, likely because they knew a new director  
4 was coming onboard, and she may not agree. So she  
5 would want to undo whatever we did.

6 Q. Why did you want to make this move to  
7 community corrections?

8 A. Well, I was hopeful, that in the end, it  
9 would result to a pay increase, by taking over some  
10 large units from the assistant division director.

11 I think that Julie had envisioned in her  
12 mind that she sort of had two assistant directors,  
13 instead of one. And now we're transitioning, the way  
14 we wanted it to be all along, needing more help.

15 Q. Do you know if there are plans to fill that  
16 board operations director position that was left?

17 A. I don't believe so.

18 Q. So who is responsible for supervising the  
19 analysts now?

20 A. Steve Mueller.

21 Q. And who's responsible for conducting  
22 legislative reviews and behalf of the board?

23 A. I would assume he would be.

24 Q. Does he have any legal training?

25 A. No.



1 MS. BREIHAN: I think that's all I have.

2 MR. SPILLANE: I have some questions.

3 CROSS-EXAMINATION BY MR. SPILLANE:

4 Q. The first thing I'm going to do, ma'am, is  
5 hand you -- this is the 12-23-16 board minutes. And I  
6 was wondering if you could read the part that I made a  
7 geometric shape around.

8 A. Okay. "If the decision is to re-hear a  
9 JL WOP offender, circumstances may be marked. Kelly  
10 indicated that the worksheet filled out during the  
11 hearing provides enough reasoning for denial of parole  
12 beyond the reasons reported on the offender notice."

13 Q. And that's what I wanted to hear.

14 Now, the worksheet, is that Exhibit 28,  
15 which we talked about earlier?

16 A. Yes.

17 Q. Now, if I understand that correctly --  
18 correct me if I'm wrong -- the notice given to the  
19 inmate will not always include all the reasons that  
20 were considered or used in denying parole, correct?

21 A. Correct.

22 Q. Exhibit 28 may include reasons that support  
23 the denial of parole?

24 A. Or the release.

25 Q. Or the release?

1           **A.     Yes.**

2           Q.     Now, you talked earlier about there being  
3     no legal requirement for putting any reasons on the  
4     notice to the inmate?

5           **A.     Correct.**

6           Q.     Please explain why that is.

7                   MS. BREIHAN: I'll object it calls for a  
8     legal conclusion.

9                   MR. SPILLANE: It's not like you haven't  
10    asked her for a hundred of them.

11                  THE WITNESS: Well, in my opinion, we're  
12    required to furnish an offender with the decision, but  
13    not the reason for the decision.

14    BY MR. SPILLANE:

15           Q.     And is there a requirement that you give a  
16    reason if it is above or below the guideline level in  
17    the notice?

18                   If you don't know, that's fine.

19           **A.     I don't know. What I'm saying about the**  
20    **legal requirement, to give them a reason, I'm talking**  
21    **about specific to this statute. Not in general.**

22           Q.     Okay. I'm going to ask you to fill out.

23                   So as I understand what you're saying,  
24    specific to this statute, as in other cases, the notice  
25    to them may not include all of the reasons that parole

1 was denied; that may be included in the board action  
2 sheet, or No. 28, which was attached to the board  
3 action sheet?

4 **A. Correct.**

5 MR. SPILLANE: Let me ask Mr. Crane: Do  
6 you have any questions that I forgot to ask?

7 MR. CRANE: I have one question.

8 CROSS-EXAMINATION BY MR. CRANE:

9 Q. We talked earlier -- I don't know if we  
10 need to reference specific documents -- but you wrote  
11 in a memo that there may be a gap in determining  
12 offender maturity at the time of their offense?

13 **A. Yes.**

14 Q. Could that gap be filled by information  
15 that offenders would submit?

16 **A. Yes.**

17 Q. Okay.

18 MR. SPILLANE: No further questions.

19 MS. BREIHAN: I do have some questions.

20 REDIRECT EXAMINATION BY MS. BREIHAN:

21 Q. You mentioned, on the topic of what  
22 materials might be available in these JL WOP parole  
23 files to assess maturity or mental competency at the  
24 time of the offense, you mentioned that there are these  
25 barebones commitment reports, right?

1           **A.     Yes.**

2           **Q.     Can you talk to me about what kind of**  
3           **assessment is done at the time of commitment as to what**  
4           **might relate to maturity or mental ability of an**  
5           **inmate?**

6           **A.     I wouldn't be able to speak about that as**  
7           **an expert.**

8                   **I mean, just generally knowing they**  
9           **classify offenders sometimes by the level of aggression**  
10          **they appear to exhibit.**

11                   **So you wouldn't put probably a very meek**  
12          **person in with a very strong, dominant personality,**  
13          **because the risk of being victimized is greater. So**  
14          **you might look at some of those assessments to gauge.**

15                   **Sometimes it was the caseworker, who**  
16          **initially interviewed, who says this person appears to**  
17          **be impulsive, a thrill-seeker, kind of -- I mean, it**  
18          **wasn't a formal assessment. It was more observation.**

19          **Q.     Do you know if there's an educational**  
20          **screening done at the time of commitment to assess IQ,**  
21          **or cognitive or learning disabilities?**

22          **A.     Yes, there are. Our education department**  
23          **does testing upon entry and that information's**  
24          **available.**

25          **Q.     Is that redone periodically throughout the**

1 inmate's incarceration?

2           **A. I don't know if they retest, but they would**  
3 **place them -- either in educational programming, and**  
4 **you would hope that that would improve.**

5           Q. And do you know whether the same kinds of  
6 educational programs are offered at the facility  
7 regardless of the security level of that facility?

8           **A. I can't answer as an expert on that. But I**  
9 **believe that the educational resources are probably not**  
10 **available at every facility. And, in fact, that**  
11 **someone who did not have the possibility of parole may**  
12 **not be able to obtain a seat.**

13           Q. So how, then, does that impact the analysis  
14 of one of these juvenile life without parole inmate's  
15 institutional records, where perhaps they've  
16 not -- they don't have quite an extensive history of  
17 taking certain courses in large part because those  
18 weren't available to them? Is that taken into  
19 consideration?

20           **A. Yes. They're not punished for being where**  
21 **they're at for lack of opportunity.**

22           Q. And what about -- one of the factors that  
23 seems to be considered is the inmate's institutional  
24 record, correct?

25           **A. Yes.**

1 Q. And how is that assessed?

2 A. I don't know how it is for the other board  
3 members or panel members, but I would expect that there  
4 might have been conduct violations early on in an  
5 incarceration for one of these individuals who would  
6 have been protecting themselves.

7 I understand what happens in a prison to  
8 young males. And especially when you take them into a  
9 maximum security prison. I would hope as they learn to  
10 adjust and participate in programming, and become less  
11 impulsive, that their conduct should improve. And so  
12 what you're looking for is kind of a decrease as they  
13 age.

14 Certainly you're looking for -- the minor  
15 violations aren't as big of a deal. You're looking for  
16 major violence, sexual offending-type things.

17 Q. And how would you interpret, in this life  
18 without context, if an inmate's institutional record  
19 didn't involve vocational courses or work experience  
20 until after 2012 when the Miller decision came down,  
21 and there might have been some hope of potential  
22 release that wasn't there before, would that be held  
23 against an inmate?

24 A. I would think it would be held for them.  
25 You know, I get that they probably didn't have any hope

1 or reason to change, prior to the law being put into  
2 effect. That's just my opinion.

3 I would think if you do see light at the  
4 end of the tunnel, and think there may be, you would  
5 want to better yourself, so that you would be a good  
6 candidate.

7 Q. And how are actual innocence claims handled  
8 during hearings and deliberations of parole grants?

9 A. I don't know that I have much experience  
10 with that, with actual offenders who appear that are  
11 appealing their case because they are claiming  
12 innocence. So I couldn't answer that.

13 MS. BREIHAN: I have no further questions.

14 RECROSS-EXAMINATION BY MR. SPILLANE:

15 Q. Did I understand your answer to be that  
16 institutional records may give the board some guidance  
17 to maturation rehabilitation and growth since the time  
18 of the offense?

19 A. They may.

20 MR. SPILLANE: Thank you.

21 MR. CRANE: Do you want to waive signature  
22 or review it?

23 THE WITNESS: I don't need to see this.

24 (Signature waived.)

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## 1 CERTIFICATE OF REPORTER

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I, Kim D. Murphy, Certified Court Reporter,  
for the State of Missouri, do hereby certify that the  
witness whose testimony appears in the foregoing  
deposition was duly sworn by me; that the testimony of  
said witness was taken by me to the best of my ability  
and thereafter reduced to typewriting under my  
direction; that I am neither counsel for, related to,  
nor employed by any of the parties to the action in  
which this deposition was taken, and further that I am  
not a relative or employee of any attorney or counsel  
employed by the parties thereto, nor financially or  
otherwise interested in the outcome of the action.

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Kim D. Murphy, CCR